



# The Port of Long Beach

"America's most Modern Port"

P. O. BOX 570 • LONG BEACH, CA 90801-0570 • TELEPHONES: (310) 437-0041 • FAX: (310) 437-3231 • TELEX: 65-6452 PORTOBEAC

PROPERTIES

JCL	<input checked="" type="checkbox"/>
QIB	<input checked="" type="checkbox"/>
PEP	<input checked="" type="checkbox"/>
RAZ	<input checked="" type="checkbox"/>
FRB	<input checked="" type="checkbox"/>
WEA	<input checked="" type="checkbox"/>

April 12, 1995

Albert J. Garnier  
Vice President, Bulk Operations  
Metropolitan Stevedore Company  
720 East "E" Street  
Wilmington, California 90744

Subject: Amended and Restated Preferential Assignment Agreement  
HD-5000 as Amended  
Acceptance of Coal Shed Improvements

Dear Mr. Garnier:

The Board of Harbor Commissioners, at its meeting of March 20, 1995, approved final acceptance of the new 150,000 ton coal shed at Pier F.

Under the terms of Paragraph 7 of the amended and restated Preferential Assignment Agreement HD-5000 as amended, the guaranteed minimum tonnage will be increased from the current 15,000,000 metric tons to 17,476,000 metric tons for the period April 1, 1991 through March 31, 1996.

The guaranteed tonnage will be subject to additional increases when final costs for the coal shed are in and the railyard improvements are completed and accepted.

Enclosed for your reference is an analysis sheet showing how the new guaranteed tonnage was computed. If you have any questions, please contact Paul Peterson in our Properties Division at (310) 590-4162.

Sincerely,

  
S. R. Dillenbeck  
Executive Director

PEP:jlb

Enclosure

cc: Mike Slavin, Finance

netcoal.pgp

PRESIDENT'S "E" AND "E-STAR"  
AWARDS FOR EXCELLENCE IN EXPORT



**METROPOLITAN STEVEDORE COMPANY  
COMPUTATION OF  
NEW GUARANTEED MINIMUM TONNAGE**

Current Guarantee April 1, 1991 through March 31, 1996 15,000,000 M.T.

Additional Guarantee upon Completion of Coal Shed  
(effective 04-01-95) 12,380,000 M.T.\* x 12/60 or 1/5  
(no. of months remaining in 5 yr. period of agreement  
commencing 04-01-91) 2,476,000 M.T.

New Guarantee for the Period 04-01-91 through 03-31-96 17,476,000 M.T.

\* As referenced in Paragraph 7.1 of Preferential  
Assignment Agreement HD-5000, as Amended.

1 Assignee's payments under paragraph 5.1 are made.

2 7. TONNAGE GUARANTEE AND COMPENSATION

3 RENEGOTIATIONS: The parties agree that the minimum tonnage of  
4 dry bulk commodities to be shipped through the premises and  
5 bulkloading facility during the five (5) year portion of the  
6 term commencing April 1, 1991 and ending March 31, 1996 shall  
7 be fifteen million (15,000,000) metric tons ("Guaranteed  
8 Minimum Tonnage").

9 7.1 The Guaranteed Minimum Tonnage shall be  
10 subject to adjustment upon completion of the improvements  
11 described in paragraph 9 and acceptance thereof by the  
12 City. As of the first day of the month next succeeding  
13 the month in which the City accepts the improvements, in  
14 total or individually, the Guaranteed Minimum Tonnage  
15 shall be increased for the remainder of the term (subject  
16 to adjustment as provided in paragraph 7.2 and 11) by  
17 17,510,000 metric tons (if the City accepts the  
18 improvements in total) or by 12,380,000 metric tons upon  
19 acceptance of the storage shed by 4,395,000 metric tons  
20 upon acceptance of Shiploader No. 3 and by 735,000 metric  
21 tons upon acceptance of the railyard improvements. Any  
22 increase in the Guaranteed Minimum Tonnages provided in  
23 the preceding sentence resulting from the acceptance of  
24 the improvements described in paragraph 9 shall be  
25 prorated based upon the number of months remaining in the  
26 five (5) year period following the effective date of this  
27 Agreement. If the total cost of the improvements  
28 described in paragraph 9 shall either exceed or be less

1 than Twenty-two Million and No/100 Dollars  
2 (\$22,000,000.00), the Guaranteed Minimum Tonnage shall be  
3 further adjusted as of the first day of the month next  
4 succeeding the month in which the last of the improvements  
5 to be constructed is accepted by the City by an amount  
6 equal to Seven Hundred Thirty-five Thousand (735,000)  
7 metric tons for each One Million and No/100 Dollars  
8 (\$1,000,000.00) or fraction thereof that the total cost of  
9 the improvements described in paragraph 9 incurred by the  
10 City exceeds or is less than Twenty-two Million and No/100  
11 Dollars (\$22,000,000.00). "City's costs" and the "total  
12 cost of improvements described in paragraph 9" shall mean  
13 and include, but not be limited to, the costs of design,  
14 construction and testing of the improvements, including  
15 direct and allocated costs for labor, materials,  
16 expansion, supervision, taxes, transportation,  
17 administrative and general expense and other indirect or  
18 overhead expenses.

19 7.2. For the balance of the term, the Guaranteed  
20 Minimum Tonnage shall be renegotiated and adjusted with an  
21 effective date for each such adjustment of April 1, 1996,  
22 April 1, 2001 and April 1, 2006. If the parties are  
23 unable to agree on the Guaranteed Minimum Tonnage, the  
24 amount thereof shall be determined by arbitration in  
25 accordance with the provisions of paragraph 11.

26 7.3. The tonnage of all dry bulk commodities  
27 stored on Pier G but shipped by Assignee or anyone else  
00 from any other facility within the Port of Long Beach

**AMENDED AND RESTATED**  
**PREFERENTIAL ASSIGNMENT AGREEMENT**  
**between**  
**CITY OF LONG BEACH**  
**and**  
**METROPOLITAN STEVEDORE COMPANY**

Document No. HD-5000

**AMENDED AND RESTATED  
 PREFERENTIAL ASSIGNMENT AGREEMENT  
 between  
 CITY OF LONG BEACH  
 and  
 METROPOLITAN STEVEDORE COMPANY**

**TABLE OF CONTENTS**

<u>Paragraph No.</u>	<u>Title</u>	<u>Page No.</u>
1.	Recitals . . . . .	1
2.	Term . . . . .	2
3.	Premises . . . . .	2
4.	Use of Premises . . . . .	5
5.	Tariff Charges - Books and Records . . . . .	9
6.	Equipment Rental Charge . . . . .	12
7.	Tonnage Guarantee and Compensation Renegotiation . . . . .	13
8.	Maintenance and Repair . . . . .	18
9.	Improvements . . . . .	21
10.	Property and Cargo Under Assignee's Control . . . . .	22
11.	Arbitration . . . . .	22
12.	Tackle and Labor . . . . .	24
13.	Access to Premises . . . . .	24
14.	Rights of Way . . . . .	24
15.	Indemnification . . . . .	25
16.	Liability Insurance . . . . .	26
17.	Applicable Laws . . . . .	28
18.	Waiver of Liability . . . . .	29

**TABLE OF CONTENTS**

<u>Paragraph No.</u>	<u>Title</u>	<u>Page No.</u>
19.	Load Limit . . . . .	29
20.	Taxes . . . . .	30
21.	Liens . . . . .	30
22.	Signs . . . . .	31
23.	Termination for Government Use . . . . .	31
24.	Termination by Court Decree . . . . .	32
25.	Relocation Assistance . . . . .	32
26.	Non-Discrimination . . . . .	32
27.	Waiver of Claims . . . . .	33
28.	Conduct of Operations . . . . .	33
29.	Hazardous Wastes . . . . .	34
30.	Assignment . . . . .	37
31.	Fire Protection . . . . .	37
32.	Utilities . . . . .	38
33.	Default . . . . .	38
34.	Delivery of Possession . . . . .	39
35.	Holding Over . . . . .	39
36.	Miscellaneous Provisions . . . . .	40
37.	Effective Date . . . . .	42

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AMENDED AND RESTATED

PREFERENTIAL ASSIGNMENT AGREEMENT

THIS AMENDED AND RESTATED PREFERENTIAL ASSIGNMENT AGREEMENT is made and entered into as of MARCH 12, 199<sup>2</sup>, pursuant to Ordinance No. HD-1584 adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of FEBRUARY 10, 199<sup>2</sup>, by and between CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City") and METROPOLITAN STEVEDORE COMPANY, a California corporation ("Assignee").

1. RECITALS: This Amended and Restated Preferential Assignment Agreement is made and entered into with reference to the following facts and objectives:

1.1. City is the owner of a certain marine terminal facility at Pier G, Berths 212 to 215, inclusive within the Harbor District of the City of Long Beach which includes the wharves and adjacent wharf premises, ship bulkloader, stacker, conveyors, structure, and appurtenant equipment for stockpiling and reclaiming bulk commodities; and

1.2. On January 15, 1981 City and Assignee entered into a Preferential Assignment Agreement for the use of the marine terminal facility referred to in paragraph 1.1 (Harbor Department Document No. HD-3274 and Federal Maritime Commission Agreement No. 224-003939) which was amended on May 9, 1985 (Harbor Department Document No. HD-3964 and Federal Maritime Commission

John R. Callhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061



John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 Agreement No. 224-003939-001); on January 8, 1987 (Harbor  
2 Department Document HD-4238 and Federal Maritime  
3 Commission Agreement No. 224-003939-002); and on August  
4 27, 1987 (Harbor Department Document No. HD-4328 and  
5 Federal Maritime Commission Agreement No. 224-003939-003).

6 1.3 The parties desire to further amend the  
7 Preferential Assignment Agreement to revise the  
8 description of the marine terminal facility to include  
9 additional land areas, to provide for the construction of  
10 additional improvements and to revise the compensation  
11 formula.

12 1.4. In accordance with the Federal Maritime  
13 Commission's rule set forth in 46 CFR § 560.402, the  
14 parties intend by this Amended and Restated Preferential  
15 Assignment Agreement to set forth all of their agreements  
16 and understandings and to entirely restate the terms and  
17 conditions of the Preferential Assignment Agreement  
18 referred to in paragraph 1.2.

19 2. TERM: The term of this Agreement commenced on  
20 April 1, 1981 and shall end on March 31, 2011.16 See 4<sup>th</sup> amendment

21 3. PREMISES: City grants to Assignee and Assignee  
22 accepts the following assignments:

23 3.1. A nonexclusive preferential assignment of  
24 the wharf at Berths 212 to 215, inclusive, and the  
25 adjacent wharf premises together with mechanical ship  
26 bulkloader, stacker, conveyors, structures and appurtenant  
27 equipment for stockpiling and reclaiming bulk commodities,  
28 and the water area adjacent thereto required for berthing

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 of vessels (Parcels I, II, III, IV, V on Harbor Department  
2 Drawing No. HD-3457 and Parcels VI, VIII on Harbor  
3 Department Drawing No. HD 4-62 and Parcel IX on Harbor  
4 Department Drawing No. HD 4-92).

5 3.2. An exclusive preferential assignment of  
6 the Harbor Department-owned office building containing  
7 approximately 10,065 square feet and gear shed (Parcel VII  
8 on Harbor Department Drawing No. HD 4-62).

9 3.3. An exclusive preferential assignment of  
10 the coal shed to be constructed by City on Parcel IX in  
11 accordance with the provisions of paragraph 9.

12 3.4. A right of ingress and egress to and from  
13 Assignee's truck dump over land area shown on Harbor  
14 Department Drawing No. HD 3-244.

15 3.5. The premises assigned are shown on Harbor  
16 Department Drawings Nos. HD-3457 (Rev. 8/13/91), HD 4-62  
17 (Rev. 3/18/85), HD 4-92, HD 3-244, attached hereto and by  
18 this reference made a part hereof.

19 3.6. City reserves for itself, its grantees and  
20 assignees, and their successors in interest and assigns,  
21 the right of access over, through and across Parcel I of  
22 the premises to areas on Pier G southerly of and/or  
23 surrounded in part by Parcel I and located easterly of  
24 Berths 212 to 215, inclusive, which areas are not assigned  
25 to Assignee by this Agreement.

26 3.7. The use of Parcels III and IV of the  
27 premises is subject to non-exclusive rights granted to  
28 third parties to use said parcels, subject to Assignee's

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 preferential use, for the construction, maintenance,  
2 operation, repair and renewal of conveyor transfer systems  
3 thereon (as more particularly described in Harbor  
4 Department Documents Nos. HD-1909 [Atlantic Richfield  
5 Company, HD-4435 [Chevron U.S.A. Inc.], HD-4638 [Applied  
6 Industrial Materials Corporation], and HD-1978 [Beacon Oil  
7 Company], which documents, with amendments thereto  
8 (collectively referred to as "Harbor Department  
9 Documents"), are on file in the offices of the Harbor  
10 Department, and City reserves for itself, its grantees and  
11 assignees, and their successors in interest and assigns,  
12 the right of access to said Parcels III and IV in  
13 connection therewith.

14 3.8. Assignee is granted an exclusive air and  
15 surface easement to construct, maintain and use an  
16 overhead pedestrian bridge owned by City as set forth in  
17 Harbor Department Drawing HD 4-62, including the right to  
18 use certain surface areas for bridge footings and  
19 supports, and Assignee agrees to maintain the overhead  
20 pedestrian bridge in good order, condition, repair and in  
21 compliance with all laws, rules, orders and regulations of  
22 governmental agencies having jurisdiction.

23 3.9. City reserves the right to adjust the  
24 boundary lines by an enlargement or reduction in the sizes  
25 of various parcels. In such event, the attached Harbor  
26 Department Drawings shall be revised to reflect such  
27 boundary revisions, and the revised drawings shall be  
28 attached to this Agreement and filed with the Federal

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 Maritime Commission.

2 3.10. 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 limiting the generality of the  
6 foregoing, oil, gas and water rights, together with the  
7 full, exclusive and perpetual rights to explore for,  
8 remove and dispose of said minerals, or any part thereof,  
9 from the premises without, however, the rights of surface  
10 entry upon the premises.

11 3.11. This Agreement and all rights granted to  
12 Assignee hereunder are subject to restrictions,  
13 reservations, conditions and encumbrances of record,  
14 including, without limitation, the following legislative  
15 grants, to wit: Chapter 676, Statutes of 1911; Chapter  
16 102, Statutes of 1925; Chapter 158, Statutes of 1935;  
17 Chapter 29, Statutes of 1956, First Extraordinary Session;  
18 Chapter 138, Statutes of 1964, First Extraordinary  
19 Session; the Charter of the City of Long Beach; and the  
20 Federal navigational servitude.

21 4. USE OF PREMISES: The premises may be used by  
22 Assignee for the docking and mooring of vessels, the  
23 assembling, stockpiling, handling, loading and unloading of dry  
24 bulk commodities and other commodities and cargo into and from  
25 such vessels over, through and upon such premises and from and  
26 upon other vessels, barges and lighters provided Assignee shall  
27 notify City in writing before handling any commodity or cargo  
28 other than dry bulk commodities at the premises. The right

1 hereby granted to use said premises shall not be exclusive  
2 (except as to office buildings, coal shed and gear shed).

3 4.1. Notwithstanding anything to the contrary  
4 appearing in this Agreement, the coal shed to be  
5 constructed by City on Parcel IX in accordance with the  
6 provisions of paragraph 9 and exclusively assigned to  
7 Assignee shall be used solely for the storage of coal and  
8 no other commodity. In the event City shall waive the  
9 limitation on use or consent to a different use of the  
10 facility to be constructed on Parcel IX, City shall first  
11 notify in writing all tenants and/or preferential  
12 assignees of premises situated on Pier A and Pier G of its  
13 intent to waive or consent to the different use. No such  
14 waiver of consent shall be effective for any purpose  
15 unless such written notice is given by City.

16 4.2. Whenever the premises in which Assignee  
17 has a non-exclusive preferential assignment, or any part  
18 thereof, are not required, in whole or in part, for the  
19 uses permitted hereunder, the Executive Director of the  
20 Long Beach Harbor Department ("Executive Director") shall  
21 have the right to and may make temporary assignments to  
22 any other person, firm or corporation to use the premises,  
23 or any part thereof, as provided in Port of Long Beach  
24 Tariff No. 4, as the same now exists or hereafter may be  
25 amended or restated ("Tariff No. 4") and all tariff  
26 charges accruing in connection with such temporary  
27 assignment shall be and remain the property of City.

28 4.3. The bulkloading equipment and facilities

1 situated on the premises shall not be temporarily assigned  
2 for the handling of such commodities which, in the opinion  
3 of the Executive Director, are not suitable.

4 4.4. The Executive Director shall require  
5 temporary assignees to comply with all applicable laws and  
6 regulations and to defend and to indemnify Assignee, the  
7 City of Long Beach, its Board of Harbor Commissioners  
8 (individually and collectively), and their officers and  
9 employees from all actions, suits, proceedings, claims and  
10 demands, loss, liens, costs, expense and liability, of any  
11 kind and nature whatsoever, for injury to or death of  
12 persons or damage to property, brought, made, filed  
13 against, imposed upon or sustained by Assignee, the City  
14 of Long Beach, its Board of Harbor Commissioners  
15 (individually and collectively) or their officers and  
16 employees, and arising from or attributable to or caused,  
17 directly or indirectly, through negligence or otherwise,  
18 by such temporary assignment and use or occupancy of the  
19 premises, or the machinery, equipment, structures and  
20 improvements located on the premises or from operations  
21 conducted thereon by such temporary assignees, their  
22 officers, agents or employees, or by any person or persons  
23 acting on their behalf.

24 4.5. The premises shall not be used for any  
25 other purposes without the prior written consent of the  
26 Executive Director, and in no event, anything to the  
27 contrary notwithstanding, shall the premises be used for  
28 any purpose which shall interfere with commerce,

1 navigations or fisheries, or be inconsistent with the  
2 trusts upon which the lands on which the premises are  
3 located are now or may hereafter be held by the City of  
4 Long Beach.

5 4.6. Assignee's function as operator of the  
6 bulkloading facility is to receive the bulk commodities as  
7 they are delivered to the premises by truck, rail or  
8 otherwise, to stockpile them and/or to deliver them to the  
9 end of the spout over the vessel to be loaded, and that  
10 the bulkloading facility has completed delivery when the  
11 commodities flow out of the spout. All functions in  
12 receiving and stowing the bulk commodities aboard the  
13 vessel, including the trimming of the cargo by use of  
14 mechanical trimmers or by the spout, are those of the  
15 stevedore. Assignee, as operator of the bulkloading  
16 facility, shall perform no function on the vessels. It is  
17 recognized that Assignee is also engaged in the business  
18 of a stevedore at the Port of Long Beach, and that  
19 Assignee may, in its capacity as stevedore and not in its  
20 capacity as operator of the bulkloading facility, be  
21 requested to, and will, perform stevedoring functions in  
22 connection with the loading of bulk commodities aboard  
23 vessels. However, it is further understood and agreed  
24 that Assignee shall not have the exclusive right to  
25 perform stevedoring services upon the premises or upon  
26 vessels berthed at Berths 212 to 215, inclusive, and that  
27 any responsible person, firm or corporation may come upon  
28 the premises for the purpose of performing stevedoring

1 operations when requested to do so by any steamship  
2 operator, master, agent, charterer or by any person  
3 legally responsible for the loading or unloading of a  
4 vessel berthed at Berths 212 to 215, inclusive.

5 4.7. In addition to the rights granted to third  
6 parties to use Parcels III and IV of the premises (as  
7 recited in paragraph 3.7), City has also granted to said  
8 third parties by the Harbor Department Documents certain  
9 rights to use City's conveyor system and the wharves at  
10 Berths 212 to 215, inclusive, (subject to Assignee's  
11 preferential rights granted by City) for the conveyance of  
12 the bulk commodities of said third parties from their  
13 leased premises to the bulk commodity conveyor and loading  
14 system on the premises, in accordance with the covenants,  
15 conditions and agreements contained in the Harbor  
16 Department Documents. The Harbor Department Documents  
17 also provide that said third parties may exercise their  
18 rights granted by City by contracting with Assignee herein  
19 or with independent stevedoring contractors and terminal  
20 operators who may request assignments of City's conveyor  
21 system from City, for the movement of bulk commodities  
22 from their leased premises as to wharf for loading aboard  
23 vessels.

24 5. TARIFF CHARGES - BOOKS AND RECORDS: Assignee  
25 shall pay, or cause to be paid, to City as rent for the use of  
26 the premises all tariff charges accruing under Tariff No. 4 in  
27 connection with the use of the premises hereunder by Assignee.

28 5.1. On or before the tenth (10th) day following



1 the departures of each vessel docking at Berths 212 to  
2 215, inclusive, Assignee shall file with the Executive  
3 Director, on forms approved by City, a statement verified  
4 by the oath of Assignee's manager or other duly authorized  
5 representative, showing all wharfage and other applicable  
6 charges which shall have been assessed in accordance with  
7 the provisions of Tariff No. 4 with respect to each such  
8 vessel. Within forty-five (45) days (or such other period  
9 of time as may be prescribed in Tariff No. 4, Item 714[c])  
10 after the departure of a vessel docking at Berths 212 to  
11 215 inclusive, Assignee shall pay City all such wharfage  
12 and other applicable tariff charges.

13 5.2. On or before the tenth (10th) day of each  
14 month, Assignee shall file with the Executive Director, on  
15 forms approved by City, a statement verified by the oath  
16 of Assignee's manager or other duly authorized  
17 representative, showing all wharfage charges which shall  
18 have been assessed where the departure of such a vessel is  
19 not involved and for all wharf demurrage, storage and  
20 other charges, if any, during the preceding calendar  
21 month. Assignee shall pay to City all such tariff charges  
22 at the same time payments under paragraph 5.1 are made.

23 5.3. Assignee shall furnish such additional  
24 reports relating to its use of the premises as may be  
25 requested by the Executive Director. Assignee shall keep  
26 full and accurate records relating to its operations on  
27 the premises, and the records shall be subject to  
28 inspection and audit by representatives of City at any and

1 all reasonable times during normal business hours, and  
2 copies may be made of any and all such records. Said  
3 records shall be kept at Assignee's principal place of  
4 business in the City of Los Angeles or at Assignee's  
5 office on Pier G, Port of Long Beach.

6 5.4. Within ninety (90) days after the end of  
7 Assignee's fiscal year, Assignee shall prepare and deliver  
8 or cause to be prepared and delivered to City a complete  
9 annual financial statement prepared in accordance with  
10 generally accepted accounting principles containing a  
11 statement of income and retained earnings and a balance  
12 sheet statement for all of its operations which statement  
13 shall be certified by an independent certified public  
14 accountant.

15 5.5. For any bulk commodities stockpiled by  
16 Assignee on the premises and which may thereafter be  
17 removed without passing over the wharf at Berths 212 to  
18 215, inclusive, Assignee shall pay to City a sum equal to  
19 the wharfage charges applicable thereto as prescribed by  
20 Tariff No. 4, as if the bulk commodity had passed over the  
21 wharf.

22 5.6. As an accommodation and without relieving  
23 Assignee of its obligation to pay all tariff charges, City  
24 agrees to invoice each vessel, its owners, charterers or  
25 agents for tariff charges other than wharfage and  
26 equipment rental (as provided in paragraph 6) and to  
27 accept payment from the vessel, its owners, charterers or  
28 agents. In the event City shall be unable to affect

1 collection of tariff charges invoiced to the vessel, its  
2 owners, charterers or agents within forty-five (45) days  
3 after the date of City's invoice, Assignee shall pay to  
4 the City within fifteen (15) days after demand the amount  
5 of the tariff charges so invoiced without interest or late  
6 charges; provided, however, if Assignee shall fail or  
7 refuse to pay upon demand the amount of tariff charges so  
8 invoiced, the invoice shall be deemed delinquent and shall  
9 bear interest as provided in paragraph 5.7.

10 5.7. All delinquent payments of tariff charges  
11 or other payments due City pursuant to this Agreement  
12 (whether invoiced by the City to Assignee or to a vessel,  
13 its owner, charterers or agents) shall bear interest at  
14 the rate prescribed in Tariff No. 4. All invoices issued  
15 by City are due and payable upon presentation.

16 6. EQUIPMENT RENTAL CHARGE: In addition to the  
17 charges to be paid under paragraph 5 and in consideration of  
18 the granting of this preferential assignment of the premises  
19 and bulkloading facilities located thereon, Assignee shall pay  
20 to City as equipment rental charge in the amount prescribed in  
21 Item 515 of Tariff No. 4 for all merchandise in bulk handled by  
22 the bulkloading facilities by Assignee during the preceding  
23 calendar month. Merchandise in bulk shall be deemed "handled"  
24 only where (1) it is loaded aboard a vessel or (2) having been  
25 received at or by the bulkloading facilities, it is removed  
26 from the premises other than by loading aboard a vessel, with  
27 the use of said bulkloading equipment and facilities. Said  
28 equipment rental charge shall be paid to City at the same time

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Assignee's payments under paragraph 5.1 are made.

7. TONNAGE GUARANTEE AND COMPENSATION

RENEGOTIATIONS: The parties agree that the minimum tonnage of dry bulk commodities to be shipped through the premises and bulkloading facility during the five (5) year portion of the term commencing April 1, 1991 and ending March 31, 1996 shall be fifteen million (15,000,000) metric tons ("Guaranteed Minimum Tonnage").

7.1 The Guaranteed Minimum Tonnage shall be subject to adjustment upon completion of the improvements described in paragraph 9 and acceptance thereof by the City. As of the first day of the month next succeeding the month in which the City accepts the improvements, in total or individually, the Guaranteed Minimum Tonnage shall be increased for the remainder of the term (subject to adjustment as provided in paragraph 7.2 and 11) by 17,510,000 metric tons (if the City accepts the improvements in total) or by 12,380,000 metric tons upon acceptance of the storage shed, by 4,395,000 metric tons upon acceptance of Shiploader No. 3 and by 735,000 metric tons upon acceptance of the railyard improvements. Any increase in the Guaranteed Minimum Tonnages provided in the preceding sentence resulting from the acceptance of the improvements described in paragraph 9 shall be prorated based upon the number of months remaining in the five (5) year period following the effective date of this Agreement. If the total cost of the improvements described in paragraph 9 shall either exceed or be less

5,000,000/yr

15,000  
17,510  
32,510  
15,000,000  
12,380,000  
5,120,000  
5,120,000

1 than Twenty-two Million and No/100 Dollars  
2 (\$22,000,000.00), the Guaranteed Minimum Tonnage shall be  
3 further adjusted as of the first day of the month next  
4 succeeding the month in which the last of the improvements  
5 to be constructed is accepted by the City by an amount  
6 equal to Seven Hundred Thirty-five Thousand (735,000)  
7 metric tons for each One Million and No/100 Dollars  
8 (\$1,000,000.00) or fraction thereof that the total cost of  
9 the improvements described in paragraph 9 incurred by the  
10 City exceeds or is less than Twenty-two Million and No/100  
11 Dollars (\$22,000,000.00). "City's costs" and the "total  
12 cost of improvements described in paragraph 9" shall mean  
13 and include, but not be limited to, the costs of design,  
14 construction and testing of the improvements, including  
15 direct and allocated costs for labor, materials,  
16 expansion, supervision, taxes, transportation,  
17 administrative and general expense and other indirect or  
18 overhead expenses.

19 7.2. For the balance of the term, the Guaranteed  
20 Minimum Tonnage shall be renegotiated and adjusted with an  
21 effective date for each such adjustment of April 1, 1996,  
22 April 1, 2001 and April 1, 2006. If the parties are  
23 unable to agree on the Guaranteed Minimum Tonnage, the  
24 amount thereof shall be determined by arbitration in  
25 accordance with the provisions of paragraph 11.

26 7.3. The tonnage of all dry bulk commodities  
27 stored on Pier G but shipped by Assignee or anyone else  
28 from any other facility within the Port of Long Beach

1 shall be deemed tonnage handled at or through the premises  
2 for the purpose of determining whether Assignee has met  
3 its Guaranteed Minimum Tonnage requirement.

4 7.4. In the event Assignee fails to handle the  
5 Guaranteed Minimum Tonnage at or through the premises  
6 during any five (5) year segment of the term  
7 ("shortfall"), Assignee shall pay to City within thirty  
8 (30) days after the end of such five (5) year segment in  
9 which the Guaranteed Minimum Tonnage is not attained the  
10 dollar equivalent to the shortfall. For the purposes of  
11 this paragraph 7.4 and subparagraphs 7.4.1 to 7.4.4  
12 inclusive, the remaining years of the term shall be  
13 divided into five (5) year segments commencing on April 1,  
14 1996, April 1, 2001 and April 1, 2006. The shortfall  
15 expressed in metric tons shall be converted to dollars as  
16 follows:

17 7.4.1. The first fifteen million  
18 (15,000,000) metric tons of the Guaranteed Minimum  
19 Tonnage shall be converted to dollars by multiplying  
20 the total of the wharfage charge set forth in Item  
21 356 of Tariff No. 4 and the equipment rental charge  
22 set forth in Item <sup>8</sup>515 of Tariff No. 4 by fifteen  
23 million (15,000,000).

24 *revised by Amendment #2*  
25 7.4.2. The remainder of the Guaranteed  
26 Minimum Tonnage shall be converted to dollars by  
27 multiplying the wharfage rate set forth in Item 364  
28 of Tariff No. 4 by the amount of metric tons of the  
Guaranteed Minimum Tonnage in excess of fifteen

1 million (15,000,000) metric tons.

2 7.4.3. The shortfall, expressed in dollars,  
3 shall be determined by adding the dollar equivalents  
4 calculated under paragraphs 7.4.1 and 7.4.2 and  
5 subtracting from that sum the total tariff charges  
6 paid by Assignee to City pursuant to the provisions  
7 of paragraphs 5 and 6.

8 Revised by 2nd amend; 7.4.4. In the event the wharfage charges  
9 set forth in Items 356 and 364 of Tariff No. 4 or  
10 the equipment rental charge set forth in Item 515 of  
11 Tariff No. 4 are changed during a five (5) year  
12 segment of the term, the shortfall shall be  
13 converted to dollars by (i) multiplying each  
14 applicable wharfage charge and/or equipment rental  
15 charge by the number of days each such charge shall  
16 be in effect during the five (5) year segment in  
17 question; (ii) adding the results of said  
18 multiplications; and (iii) dividing by 1825. The  
19 result of this calculation shall then be multiplied  
20 by the difference between the tonnage actually  
21 handled during the five (5) year segment and the  
22 Guaranteed Minimum Tonnage.

23 7.5. If the premises, including the bulkloading  
24 machinery, equipment, structures and improvements located  
25 thereon, are damaged by fire, flood, earthquake,  
26 explosion, the public enemy, or acts of God, or are seized  
27 or the operation thereof abated by governmental authority  
28 so as to render the premises or facility wholly or

1 partially untenable or unfit for use, or so as to make  
2 it impracticable for Assignee to make reasonable use of  
3 the premises or to load vessels, or in the event that the  
4 shipment of bulk commodities, normally handled at the  
5 premises shall be prohibited by law or other governmental  
6 regulation, or should the production and/or marketing of  
7 petroleum coke, coal or other bulk commodities be  
8 substantially reduced by reason of world-wide economic  
9 conditions beyond the control of Assignee and its  
10 customers for whom it handles the movement and loading of  
11 such products, then there shall be a proportionate  
12 reduction in the Guaranteed Minimum Tonnage according to  
13 the nature and extent of the damage sustained or the  
14 reduction in tonnages handled at the premises by reason  
15 thereof by mutual agreement of the parties.

16 7.6. If, by reason of strikes or other labor  
17 disputes, lockouts, or other work stoppages, Assignee is  
18 unable to use the assigned premises for the uses permitted  
19 hereunder, then there shall be a proportionate reduction  
20 of the Guaranteed Minimum Tonnage commencing the thirty-  
21 first day after receipt by City of notice of such labor  
22 disturbance, by the percentage the number of days of such  
23 labor disturbance (commencing with the thirty-second day  
24 of said labor disturbance until such labor disturbance  
25 ceases) bears to the entire term of this Agreement.  
26 Should a labor disturbance commence after Assignee has  
27 shipped the Guaranteed Minimum Tonnage, there shall be no  
28 reduction in said Guaranteed Minimum Tonnage by reason of



1 such labor disturbance.

2 8. MAINTENANCE AND REPAIR: Except as provided in  
3 paragraphs 8.1 and 8.5, Assignee, at its cost, shall keep and  
4 maintain the premises and all bulkloading machinery, equipment,  
5 structures and improvements located thereon (but excluding the  
6 water area, the wharf structure, fender systems, conveyor  
7 terminals and pits) in good and substantial repair and  
8 operating condition and shall make all necessary repairs  
9 thereto and shall replace all worn or unfit parts and equipment  
10 with parts and equipment of a standard quality not less than  
11 the original equipment as of the commencement of the term of  
12 this Agreement. Assignee's obligation of maintenance and  
13 repair shall include all machinery and equipment located in the  
14 conveyor tunnels and pits.

15 8.1. There shall be no duty to repair damage to  
16 the premises, equipment and facilities caused by fire,  
17 flood, earthquake, explosion, the public enemy, acts of  
18 God, subsidence, or by acts or neglect of City, its  
19 officers and employees, or by the acts, conducts or  
20 omission of third persons lawfully upon the premises  
21 pursuant to express authorization granted by the Executive  
22 Director.

23 8.2. Insofar as maintenance and repair of the  
24 railroad trackage upon the premises is concerned, it is  
25 acknowledged that Assignee and Southern Pacific  
26 Transportation Company have entered into an agreement,  
27 wherein said railroad trackage, on and near the premises,  
28 will be maintained by Southern Pacific. It is agreed by

1 City and Assignee, however, that to the extent said track  
2 maintenance for trackage upon the premises is not  
3 performed by Southern Pacific Transportation Company, it  
4 shall be maintained by Assignee pursuant to the provisions  
5 of this Agreement.

6 8.3. Except as herein provided, Assignee shall be  
7 liable for and shall pay, or cause to be paid to City,  
8 upon demand, the actual cost of all damages or repairs to  
9 property owned by City, caused negligently or  
10 intentionally, by Assignee, its officers, agents,  
11 employees, licensees, invitees, or permittees, or by  
12 vessels for which it furnishes services at Berths 212 to  
13 215, inclusive, pursuant to this Agreement.

14 8.4. In the event Assignee fails to perform such  
15 maintenance, repair and rehabilitation, as herein  
16 provided, City within twenty-four (24) hours after written  
17 notice to Assignee may undertake such maintenance, repair  
18 and rehabilitation at the expense of Assignee, as provided  
19 herein. Assignee shall promptly reimburse City for City's  
20 costs upon receipt of an itemized statement.

21 8.5. City, at its cost, shall be responsible for  
22 maintaining the pier, wharves and bulkheads, and the  
23 fender system on the premises, and shall make all  
24 necessary repairs thereto, including any and all repairs  
25 occasioned by reasonable wear and tear and action of the  
26 elements except where damage is caused by the negligent or  
27 intentional acts, whether such acts be acts of commission  
28 or omission, of Assignee, its officers, agents or

1 employees or of vessels for which Assignee furnished  
2 services at Berths 212 to 215 inclusive pursuant to this  
3 Agreement, in which case City may make all necessary  
4 repairs, and Assignee shall reimburse City for the cost  
5 thereof. Except for replacements due to reasonable wear  
6 and tear and action of the elements, any required  
7 relacement of sound wharf piling or elements of the fender  
8 system arising from operations involving vessels calling  
9 at Berths 212 to 215 inclusive will be presumed to have  
10 resulted from or be caused by the negligent or improper  
11 handling or berthing of such vessels.

12 8.6. Assignee shall at all times keep and  
13 maintain the premises, machinery, equipment, structures  
14 and improvements in a safe, clean, wholesome, sanitary and  
15 sightly condition under all applicable federal, state,  
16 municipal and other laws, ordinances, rules and  
17 regulations and to the satisfaction of the Executive  
18 Director to the extent that from time to time the  
19 necessity for any such keeping or maintenance, directly or  
20 indirectly, is caused by or arises out of any act,  
21 omission, or neglect of, or any use or occupancy of, said  
22 premises by Assignee, its officers, agents, employees,  
23 licensees, permittees, or invitees.

24 8.7. Assignee waives the right to make repairs at  
25 the expense of the City and waives the benefits of the  
26 provisions of Section 1941 and 1942 of the California  
27 Civil Code relating thereto.

28 8.8. Assignee agrees to provide proper containers

1 for trash, and to keep the premises, including the water  
2 area, free and clear of rubbish, debris and litter at all  
3 times, including debris from vessels and cargo loading and  
4 unloading operations. No offensive or refuse matter, nor  
5 any substance constituting any unnecessary, unreasonable  
6 or unlawful fire hazard, nor material detrimental to the  
7 public health shall ever be permitted to be or remain on  
8 the premises and Assignee shall exercise reasonable care  
9 to prevent such material or matter from being or  
10 accumulating upon the premises. Unless caused by the  
11 negligent or intentional acts or omissions of Assignee,  
12 its officers, agents, servants or employees, or assignees  
13 or third parties acting with the consent of Assignee,  
14 Assignee shall not be liable to City for any loss,  
15 liability or damages sustained by City, arising out of or  
16 connected with the presence on the premises of offensive  
17 or refuse matters, substances constituting or consisting  
18 of unnecessary, unreasonable or unlawful fire hazards, or  
19 materials detrimental to the public health.

20 9. IMPROVEMENTS: City, at its cost, shall design  
21 and construct (i) a One Hundred Fifty Thousand (150,000) metric  
22 ton coal storage shed on Parcel IX; (ii) a new No. 3 Shiploader  
23 for white bulk cargo; and (iii) a reconfigured Pier A Rail  
24 Yard. <sup>done</sup> The estimated cost of the improvements to be designed  
25 and constructed by City is Twenty-two Million and No/100  
26 Dollars (\$22,000,000.00). Assignee acknowledges and agrees  
27 that City shall not be obligated to commence construction of  
28 the improvements described in this paragraph and until City has

1 complied with the provisions of the California Environmental  
2 Quality Act ("CEQA"), the California Coastal Act ("Coastal  
3 Act"), and has obtained all permits, consents and approvals  
4 reasonably required by governmental agencies having  
5 jurisdiction. Upon compliance with the provisions of CEQA and  
6 the Coastal Act and obtaining all requisite permits, consents  
7 and approvals described in this paragraph, City shall  
8 diligently prosecute the construction to completion. City  
9 shall not be liable to Assignee and Assignee waives all claims  
10 for damages from the City resulting from interruption of  
11 Assignee's business during the course of construction.

*See amendments 1, 3, 4 and 5 for changes to Para 9.*

12 **10. PROPERTY AND CARGO UNDER ASSIGNEE'S CONTROL:**

13 City reserves the right to inspect the premises for fire  
14 hazards and other hazards of a like kind or nature. City  
15 assumes no responsibility or obligation to so inspect the  
16 premises. City assumes no responsibility or liability for loss  
17 or damage to the property of Assignee or property under the  
18 care, custody or control of Assignee, whether caused by fire or  
19 other causes, nor does it assume any responsibility whatsoever  
20 for any shortages of cargo handled by Assignee at the premises.  
21 Assignee hereby waives all claims against City with respect to  
22 such property, provided, however, that Assignee does not waive  
23 claim for injury, loss or damage to property or to any person  
24 on the premises in case such injury or damage is caused by the  
25 sole negligence of City, or of any person for whose conduct  
26 City is responsible.

27 **11. ARBITRATION:** The parties hereto agree to  
28 renegotiate the Guaranteed Minimum Tonnage at least sixty (60)

1 days prior to the adjustment dates provided in paragraph 7.1.  
2 The renegotiated figures shall be determined by the parties  
3 according to the criteria set forth in paragraph 11.1. If the  
4 parties cannot agree upon the Guaranteed Minimum Tonnage by  
5 such date, the matter shall be determined by arbitration in  
6 accordance with the provisions of paragraph 11.2.

7 11.1. In the negotiations to establish the  
8 Guaranteed Minimum Tonnage, the parties shall take into  
9 consideration the character of the premises, their value,  
10 the fair rental value of similar premises and facilities  
11 devoted to similar use, the terms, conditions and  
12 restrictions of this Agreement, the tonnage handled at the  
13 premises, the return to the City, and any other facts and  
14 data necessary for the proper determination of such  
15 figures.

16 11.2. Whenever arbitration hereunder is  
17 necessary, the party desiring arbitration shall select an  
18 arbitrator and give written notice to the other party, who  
19 shall select an arbitrator within ten (10) business days  
20 after receipt of such notice. If the other party fails to  
21 name such second arbitrator within said ten (10) business  
22 days, the arbitrator named by the first party shall decide  
23 the matter. The two arbitrators chosen shall, within ten  
24 (10) business days after the appointment of the second,  
25 select a third. If the two cannot agree upon a third, he  
26 shall be appointed by any judge of the Superior Court of  
27 the County of Los Angeles, California, upon application  
28 made therefor by either party, upon ten (10) days' written

1 notice to the other. Upon their appointment, the three  
2 arbitrators shall enter immediately upon the discharge of  
3 their duties and must determine the amount of said  
4 equipment rental. Such arbitration proceedings shall be  
5 in accordance with the provisions of Title 9 (Arbitration)  
6 of Part 3 of the California Code of Civil Procedure. Each  
7 party shall pay the fees and expenses of its appointed  
8 arbitrator and one-half (1/2) of the fees and expenses of  
9 the third arbitrator.

10 12. TACKLE AND LABOR: Assignee, at its cost, shall  
11 provide all tackle, gear and labor for the docking or mooring  
12 of vessels at the premises and shall provide, at its own cost  
13 and expense, such appliances and employ such persons as it may  
14 require for the handling of goods, wares, merchandise, and  
15 passengers thereat. Assignee shall furnish and be responsible  
16 for, the telescoping chutes, trimmers and related gear on the  
17 boom of the ship bulkloader. Assignee agrees to make such gear  
18 available to third parties to whom City may temporarily assign  
19 the ship bulkloader and premises pursuant to the provisions of  
20 paragraph 4.1 herein, at reasonable rental rates and other  
21 terms, subject to the approval of the Executive Director.

22 13. ACCESS TO PREMISES: City shall provide  
23 vehicular and rail access to the premises from the Harbor  
24 Department street and railroad trackage system. City's  
25 authorized representatives shall have access to the premises at  
26 all times for inspection, repair, fire and police purposes.

27 14. RIGHTS OF WAY: This Agreement is subject to  
28 rights of way and entry upon the premises for the installation,

1 relocation, removal, operation and maintenance of sewers,  
2 pipelines, conduits and telephone, telegraph, light, heat or  
3 power lines, whether underground or overhead, as may from time  
4 to time be determined by the Board of Harbor Commissioners, as  
5 provided in Section 1207(g) of the Charter of the City of Long  
6 Beach. Said activities shall be so conducted and said rights  
7 of way shall be so located that a minimum of interference with  
8 Assignee's use of the premises is encountered. City also  
9 reserves the right to make such changes, additions and  
10 alterations to the bulkloading machinery and equipment as it  
11 deems necessary to accommodate the movement of merchandise in  
12 bulk through the Port of Long Beach.

13 15. INDEMNIFICATION: Assignee shall defend and  
14 indemnify the City of Long Beach, its Board of Harbor  
15 Commissioners (individually and collectively) and their  
16 officers and employees ("indemnified parties") from and against  
17 any and all actions, suits, proceedings, claims and demands,  
18 loss, liens, costs, expense and liability, of any kind and  
19 nature whatsoever, for injury to or death of persons, or damage  
20 to property, including property owned by the City of Long  
21 Beach, brought, made, filed against, imposed upon or sustained  
22 by an indemnified parties or any of them and arising from or  
23 attributable to or caused, directly or indirectly, through  
24 negligence or otherwise, by the use or occupancy of the  
25 premises, or the machinery, equipment, structures and  
26 improvements located thereon, or from operations conducted  
27 thereon, by Assignee, its officers, agents or employees, or by  
28 any person or persons acting on behalf of Assignee and with the



1 knowledge and consent, express or implied, of Assignee pursuant  
2 to this Agreement, or by reason of injury to or death of  
3 employees of Assignee or others where liability arises out of  
4 provisions of Section 6300, et seq. of the California Labor  
5 Code or similar acts or statutes pertaining to the safety of  
6 premises or of equipment.

7           **16. LIABILITY INSURANCE:** As a condition precedent to  
8 the effectiveness of this Agreement, and in partial performance  
9 of Assignee's obligations under paragraph 15 herein, Assignee  
10 shall procure and maintain in full force and effect, while this  
11 Agreement shall remain in effect, a policy or policies of  
12 commercial general liability insurance from a company or  
13 companies authorized to do business in the State of California,  
14 with minimum limits of:

15                   \$5,000,000 combined single limit for death, personal  
16                   injury, bodily injury or loss sustained by any one  
17                   person or more than one person in any one  
                    occurrence, and for damage to or loss of property  
                    sustained in any one occurrence; and

18                   \$2,000,000 for damage to or loss of property of the  
19                   City, caused by fire and explosion (Fire Legal  
                    Liability).

20                   16.1. The policy or policies shall provide as  
21 follows:

22                           16.1.1. That the City of Long Beach, the  
23                           Board of Harbor Commissioners, and their officers  
24                           and employees, while acting within the scope of  
25                           their authority, shall be additional insureds, such  
26                           insurance to be primary and not contributing with  
27                           any other insurance maintained by the foregoing, but  
28                           only as related to Assignee's actual operations for

1 its own account under this Agreement and not when  
2 the premises or facilities are being used or  
3 operated by any other person or entity pursuant to  
4 secondary or temporary assignment by the Executive  
5 Director, as provided in paragraph 4.

6 16.1.2. That in the event of one insured  
7 (whether named or additional) incurring liability to  
8 any other insured (whether named or additional), the  
9 policy shall cover the insured against whom claim is  
10 or may be made in the same manner as if separate  
11 policies had been issued to each insured.

12 16.1.3. That said policy or policies  
13 shall either contain a blanket form of contractual  
14 liability coverage, including contracts and  
15 agreements, or there shall be attached to said  
16 policy or policies an endorsement providing that  
17 such insurance as is provided for therein shall  
18 apply to the obligations assumed by Assignee under  
19 paragraph 15 of this Agreement.

20 16.1.4. That the same shall not be  
21 cancelled or reduced until thirty-day written notice  
22 of such cancellation or reduction has been served  
23 upon the Executive Director by registered or  
24 certified mail.

25 16.2. The City of Long Beach, the Board of  
26 Harbor Commissioners (individually and collectively), and  
27 their officers and employees shall not be liable for the  
28 payment of any premiums or assessments on said policy

1 or policies, and Assignee agrees to indemnify said City,  
2 Board, and their officers and employees therefrom. Such  
3 insurance may provide for such deductibles or self-insured  
4 retention as shall be acceptable to the Executive  
5 Director.

6 16.3. Assignee shall deliver certified copies of  
7 the policy or policies or an endorsement on forms approved  
8 by City ("evidence of insurance") to the Executive  
9 Director for approval as to sufficiency and to the City  
10 Attorney for approval as to form.

11 16.4. At least fifteen (15) days prior to the  
12 expiration of any such policy, Assignee shall furnish City  
13 with evidence of insurance demonstrating that such  
14 insurance requirements will continue to be met. If such  
15 coverage is canceled or reduced, Assignee shall, within  
16 ten (10) days after receipt of notice of such cancellation  
17 or reduction, comply with said insurance requirements.  
18 Assignee agrees to suspend and cease all operations  
19 hereunder on the premises during such periods of time as  
20 the required insurance coverage is not in effect and the  
21 evidence of insurance has not been furnished as provided  
22 in paragraphs 16.3 and 16.4.

23 16.5. The procuring of such policy or policies  
24 of insurance shall not be construed to be a limitation in  
25 any respect upon Assignee's obligations under paragraph 15  
26 herein.

27 17. APPLICABLE LAWS: At all times Assignee, in its  
28 use and occupancy of the premises and in the conduct of its

*See amendment # 5 28 for changes to Para 17*

1 operations thereon, shall comply with and be subject to all  
2 constitutional laws and lawful ordinances and regulations  
3 applicable thereto, enacted by federal, state, municipal or  
4 other governmental bodies or departments or officers thereof,  
5 including, but not limited to Tariff No. 4, the City Charter  
6 and Municipal Code of the City of Long Beach, the Health and  
7 Safety Code of the State of California, and the rules and  
8 regulations of the Southern California Air Quality Management  
9 District of the County of Los Angeles or its successor and of  
10 the Los Angeles Regional Water Quality Control Board, but  
11 Assignee shall not be obligated hereunder to do or perform any  
12 act which City is obligated by this Agreement, or otherwise, to  
13 do or perform. Assignee shall obtain any and all necessary  
14 franchises, permits, licenses, certificates or similar  
15 documents of authority required by law.

16 18. WAIVER OF LIABILITY: Assignee hereby waives any  
17 and all claims against City of Long Beach, its Board of Harbor  
18 Commissioners (individually and collectively), their officers  
19 and employees, for damage or loss caused by a suit or  
20 proceeding, directly or indirectly attacking the validity of  
21 this Agreement, or any part thereof, or by any judgment or  
22 award in any suit or proceeding, declaring this Agreement null,  
23 void, or voidable, or delaying the same, or any part thereof,  
24 from being carried out.

25 19. LOAD LIMIT: No loading in excess of Eight  
26 Hundred (800) pounds per square foot or any vehicular loading  
27 in excess of an H20-S16 Highway Loading (the H20 indicating a  
28 maximum of twenty [20] tons per truck and the S16 indicating a

1 maximum of sixteen [16] tons per axle of semi-trailer) shall be  
2 allowed ont that portion of the premises extending inboard from  
3 face of wharf seventy-five (75) feet. No railroad loading  
4 shall exceed thirty-two and one-half (32.5) tons per axle. No  
5 loading in the remainder of the premises shall be such as to  
6 damage paving or underground utilities. In the event City  
7 finds that overloading by Assignee exists, Assignee, upon  
8 receipt of notice thereof from City, shall immediately take  
9 appropriate steps to correct the condition, and irrespective of  
10 such notice, shall be responsible for any damage arising  
11 therefrom. It is understood and agreed that the foregoing load  
12 limits refer to area loads.

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

25           21. LIENS: Except where contested in good faith in  
26 a court of competent jurisdiction, and except for liens arising  
27 from taxes or tax assessments, Assignee shall keep the premises  
28 and all improvements thereon free from liens of any kind or

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 nature arising out of its operations, including any liens  
2 arising out of any labor performed for or materials furnished  
3 to or on behalf of Assignee on the premises. Assignee agrees  
4 that it will at all times defend and indemnify City against all  
5 claims for labor or materials in connection with the  
6 construction, erection or installation of Assignee's  
7 improvements made upon the premises, or from additions or  
8 alterations made thereto, or the repair of same, by or at the  
9 direction of Assignee, and the costs of defending against any  
10 such claim, including reasonable attorneys' fees.

11           **22. SIGNS:** No signs or placards of any type or  
12 design, except safety or regulatory signs prescribed by law,  
13 shall be painted, inscribed or placed in or on the premises or  
14 any building or structure located thereon without the prior  
15 written consent of the Executive Director. Assignee agrees to  
16 remove promptly and to the satisfaction of City, at the cost  
17 and expense of Assignee, upon the expiration of the term or the  
18 earlier termination of this Agreement, any and all signs and  
19 placards placed by it upon the premises.

20           **23. TERMINATION FOR GOVERNMENT USE:** In the event  
21 the United States of America, the State of California, or any  
22 agency or instrumentality of said governments (other than the  
23 City of Long Beach) shall, by condemnation or otherwise, take  
24 title, possession or the rights to possession of the premises,  
25 or any part thereof, City may, at its option, and, if the  
26 taking has substantially impaired the utility of the premises  
27 to Assignee, Assignee may, at its option, terminate this  
28 Agreement as of the date of such taking, and all further

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 obligations of the parties shall end, except as to liabilities  
2 which shall theretofore have accrued.

3 24. TERMINATION BY COURT DECREE: In the event any  
4 court having jurisdiction in the matter shall render a decision  
5 which has become final and which will prevent the performance  
6 by City of any of its obligations under this Agreement, then  
7 either party hereto may terminate this Agreement by written  
8 notice, and all rights and obligations hereunder (with the  
9 exception of any undischarged rights and obligations that  
10 accrued prior to the effective date of termination) shall  
11 thereupon terminate.

12 25. RELOCATION ASSISTANCE: It is understood and  
13 agreed that nothing contained in this Agreement shall create  
14 any right in Assignee to relocation assistance or payment from  
15 City under the provisions of Title 1, Division 7, Chapter 16 of  
16 the California Government Code (Sections 7260 et seq.) upon the  
17 expiration of the term of this Agreement or upon its earlier  
18 termination.

19 26. NON-DISCRIMINATION: Assignee agrees, subject to  
20 applicable laws, rules and regulations, that no person shall be  
21 subject to discrimination in the performance of this Agreement  
22 on the basis of race, color, religion, national origin, sex,  
23 sexual orientation, AIDS, AIDS related condition, age,  
24 disability, handicap, or Vietnam Era veteran status. Assignee  
25 shall take affirmative action to ensure that applicants are  
26 employed and that employees are treated during employment  
27 without regard to any of these bases, including but not limited  
28 to employment, upgrading, demotion, transfer, recruitment,

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 recruitment advertising, layoff, termination, rates of pay or  
2 other forms of compensation, and selection for training,  
3 including apprenticeship. Assignee agrees to post in  
4 conspicuous places available to employees and applicants for  
5 employment notices to be provided by the City setting out the  
6 provisions of this nondiscrimination clause. Assignee shall in  
7 all solicitations or advertisements for employees state that  
8 all qualified applicants will receive consideration for  
9 employment without regard to these bases.

10 27. WAIVER OF CLAIMS: The parties hereto hereby  
11 waive all claims against the other for damage or loss caused by  
12 any suit or proceeding, directly or indirectly attacking the  
13 validity of this Agreement, or any part thereof, or by any  
14 judgment of award in any suit or proceeding declaring this  
15 Agreement null, void or voidable, or delaying the same, or any  
16 part thereof, from being carried out, provided that Assignee  
17 shall not be liable for payment of compensation hereunder to  
18 the extent that, during any period, it is so prevented from  
19 exercising its rights hereunder.

20 28. CONDUCT OF OPERATIONS: Assignee shall conduct  
21 its operations on or about the premises in such a manner as  
22 will, in the judgment of the Executive Director, in no way  
23 weaken, damage or destroy, or tend to weaken, damage or  
24 destroy, the premises or the bulkloading facilities located  
25 thereon; and in the event Assignee at any time contemplates or  
26 performs an act which, in the judgment of the Executive  
27 Director, does or will so weaken, damage or destroy, or tend to  
28 weaken, damage or destroy them, then upon written notice from



John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 the Executive Director, Assignee shall forthwith and without  
2 delay desist from performance of such act or acts.

3 29. HAZARDOUS WASTES: Assignee shall comply with  
4 all applicable standards set by federal, state or local laws,  
5 rules, regulations or orders related to Assignee's use or  
6 occupancy of the premises including but not limited to any laws  
7 regulating the use, storage, generation or disposal of  
8 hazardous materials, as defined in paragraph 29.6 ("Hazardous  
9 Material Standards"). Assignee shall establish, maintain and  
10 observe a program of compliance with all applicable Hazardous  
11 Materials Standards ("Compliance Program"). As a condition  
12 precedent to the effectiveness of this Agreement, Assignee  
13 shall submit its Compliance Program to the Executive Director  
14 for review and approval; provided, however, such review and  
15 approval shall not relieve Assignee of its obligations pursuant  
16 to this paragraph 29. Assignee shall monitor its compliance  
17 with Hazardous Materials Standards and immediately halt and  
18 correct any incident of noncompliance. On the second  
19 anniversary date of the effective date of this Agreement (as  
20 defined in paragraph 37) and every two (2) years thereafter,  
21 Assignee shall submit either a certificate that the Compliance  
22 Program conforms with all applicable Hazardous Materials  
23 Standards or a revised Compliance Program conforming to the  
24 applicable Hazardous Materials Standards for review and  
25 approval by the Executive Director. Any revised Compliance  
26 Program shall not relieve Assignee of its obligations under  
27 paragraph 29.

28 29.1 Assignee shall not cause or permit any

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 hazardous material to be brought upon, kept or used in or  
2 about the premises by Assignee, its agents, employees,  
3 contractors or invitees in a manner or for a purpose  
4 prohibited by any governmental agency or authority.

5 29.2 In the event of any incident of  
6 noncompliance which under the Hazardous Materials  
7 Standards or the Compliance Program must be reported  
8 (whether to the City or another governmental agency having  
9 jurisdiction) ("incident"), Assignee, at its cost, shall:  
10 (i) give City immediate notice of the incident, providing  
11 as much detail as possible; (ii) as soon as possible, but  
12 no later than seventy-two (72) hours, after discovery of  
13 an incident submit a written report to City, identifying  
14 the source or cause of the noncompliance of a material  
15 nature and the method or action required to correct the  
16 problem; (iii) cooperate with City or its designated  
17 agents or contractors with respect to the investigation of  
18 such problem; and (iv) promptly commence remediation of  
19 the problem in accordance with a plan approved by all  
20 governmental agencies having jurisdiction and diligently  
21 prosecute the approved plan to completion.

22 29.3 For purposes of this paragraph 29, notice  
23 shall be given to the Executive Director. Assignee shall  
24 give such notice immediately following an incident in  
25 person, by telephone or by facsimile followed by written  
26 notice in accordance with paragraph 36.6.

27 29.4 Assignee shall be liable for all costs,  
28 expenses, losses, damages, actions, claims, cleanup costs,

John R. Callhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 penalties, assessments or fines arising from Assignee's  
2 failure to comply with the Hazardous Materials Standards  
3 and the Compliance Program including, but not limited to,  
4 a failure to comply with any reporting requirements.

5 29.5 City shall have the right to conduct, at  
6 its cost, periodic audits of Assignee's compliance with  
7 the Compliance Program and management of hazardous  
8 materials at the premises. The results of such audits  
9 shall be provided to Assignee as soon as practicable  
10 following completion. City shall have the right to direct  
11 Assignee to clean up, at Assignee's cost, any spills or  
12 discharges of hazardous materials at the premises which  
13 occur any time during the term. City acknowledges that it  
14 is not the intent of this paragraph 29 to prohibit  
15 Assignee from operating its business. Assignee may  
16 operate its business according to the custom of the  
17 industry and all applicable laws so long as the use or  
18 presence of hazardous materials is strictly and properly  
19 handled, monitored and disposed of according to all  
20 Hazardous Materials Standards, the Compliance Program and  
21 the terms of this Agreement. In the event City's audit  
22 discloses any material noncompliance with the Hazardous  
23 Materials Standards, the Compliance Program, or unreported  
24 releases of hazardous material, Assignee shall reimburse  
25 the City for City's cost in performing the audit.

26 29.6 As used herein, the term "hazardous  
27 material" means any hazardous or toxic substance, material  
28 or waste which is or becomes regulated by any local

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 governmental authority, the State of California or the  
2 United States Government.

3 30. ASSIGNMENT: No concession, license, permit or  
4 privilege for the conduct of any business or other operation  
5 for profit in, upon or from the premises, and no total or  
6 partial assignment, transfer, gift or grant of control of this  
7 Agreement or of the premises, whether voluntary or involuntary,  
8 shall be valid for any purpose unless first approved by City's  
9 Board of Harbor Commissioners. Neither this Agreement nor any  
10 interest therein shall be assignable or transferable in  
11 proceedings in attachment, or garnishment or execution against  
12 Assignee or in voluntary or involuntary proceedings in  
13 bankruptcy or insolvency or receivership taken by or against  
14 Assignee or by a process of law, and possession of the whole or  
15 any part of the premises shall not be divested from Assignee in  
16 such proceedings or by any process of law without the written  
17 consent of City, and any breach of the provisions of this  
18 paragraph shall cause this Agreement to terminate immediately  
19 at the option of the City.

20 31. FIRE PROTECTION: All fire protection sprinkler  
21 systems, fire hydrant systems, standpipe systems, fire alarm  
22 systems, portable fire extinguishers and other fire-protective  
23 or extinguishing systems or appliances which have been or may  
24 be installed on the premises shall be maintained by Assignee in  
25 an operative condition at all times except where repairs or  
26 replacements are occasioned by normal wear and tear, which  
27 shall be the responsibility of City. All repairs and servicing  
28 shall be made in accordance with the provisions of the Long

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 Beach Fire Code (Uniform Fire Code, 1976 Edition, developed by  
2 the International Conference of Building Officials and the  
3 Western Fire Chiefs' Association, as modified and amended by  
4 ordinance of the City Council of the City of Long Beach) and  
5 all additions, revisions and amendments thereto, including, but  
6 not limited to, NFPA No. 13A-1976 relating to the care and  
7 maintenance of sprinkler systems.

8 32. UTILITIES: City shall provide all utility  
9 installations upon the premises, except telephone, and Assignee  
10 shall pay, before delinquent, all utility costs and charges  
11 resulting from its operations under this Agreement.

12 33. DEFAULT: If either party should fail to perform  
13 any of its obligations hereunder (except when such failure  
14 shall be excused under other provisions hereof), the other  
15 party shall have the option of terminating this Agreement as  
16 follows: The party not in default shall give written notice to  
17 the party in default, stating specifically the default relied  
18 upon by the party giving the notice as justifying termination  
19 hereof. If said default or breach is not remedied within  
20 thirty (30) days, if therein remediable, or if the party in  
21 default fails to commence promptly and attempt diligently to  
22 remedy the same where said default or breach is not remediable  
23 within thirty (30) days after said written notice, said party  
24 not in default shall have the right forthwith to terminate this  
25 Agreement. If, within such thirty-day period, the party in  
26 default does remedy or remove said default or breach, or  
27 commences promptly and attempts diligently to remedy or remove  
28 the same where not remediable within said thirty-day period,

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 and fully indemnifies the party not in default from any and all  
2 loss and liability resulting from such default or breach, the  
3 notice shall be withdrawn and this Agreement shall continue in  
4 full force and effect; provided, however, the remedies of City  
5 hereunder shall be cumulative and in addition to any other  
6 remedies available. Upon any such forfeiture or termination by  
7 City, all improvements of whatsoever character, constructed,  
8 erected or installed upon the premises by Assignee shall, at  
9 City's option, immediately become the property of City, as  
10 provided in Section 1207(i) of the City Charter. For the  
11 purposes of this paragraph, each of the covenants, conditions  
12 and agreements imposed upon or to be performed by one party  
13 shall, at the option of the other party, be deemed to be either  
14 covenants or conditions, regardless of how designated in this  
15 Agreement, provided, further, that the waiver or delay or  
16 failure to pursue any remedy by either party in respect to any  
17 default or breach of such covenants, conditions or agreements  
18 shall not be construed as a waiver, either total or partial, of  
19 such covenants, conditions or agreements, or of any subsequent  
20 default or breach thereof.

21 34. DELIVERY OF POSSESSION: Assignee agrees that,  
22 upon the termination or expiration of this Agreement, Assignee  
23 will peaceably yield up and surrender the premises and allow  
24 City to take peaceable possession thereof.

25 35. HOLDING OVER: Assignee shall not hold over after  
26 the expiration of the term of this Agreement for any cause,  
27 unless other terms, conditions and provisions be agreed upon in  
28 writing by City and Assignee prior to the expiration of the

1 term.

2 **36. MISCELLANEOUS PROVISIONS:**

3 36.1. WAIVERS. No waiver by either party at any  
4 time of any of the terms, conditions, covenants or  
5 agreements of this Agreement shall be deemed or taken as  
6 a waiver at any time thereafter of the same or any other  
7 term, condition, covenant or agreement herein contained  
8 nor of the strict and prompt performance thereof by the  
9 party obligated to perform. No delay, failure, or  
10 omission of either party to exercise any right, power,  
11 privilege or option arising from any default nor  
12 subsequent acceptance of compensation then or thereafter  
13 accrued shall impair any such right, power, privilege or  
14 option or be construed to be a waiver of any such default  
15 or relinquishment thereof of acquiescence therein. No  
16 option, right, power, remedy or privilege of either party  
17 hereto shall be construed as being exhausted or discharged  
18 by the exercise thereof in one or more instances. It is  
19 agreed that each and all of the rights, powers, options or  
20 remedies given to the parties hereto by this Agreement are  
21 cumulative, and no one of them shall be exclusive of the  
22 other or exclusive of any remedies provided by law, and  
23 that the exercise of one right, power, option, or remedy  
24 by a party shall not impair its rights to any other right,  
25 power, option or remedy.

26 36.2. LAW GOVERNING. This Agreement shall be  
27 governed by the laws of the State of California, both as  
28 to interpretation and performance.

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1                   36.3.   SUCCESSORS.    This Agreement shall be  
2 binding upon and shall enure to the benefit of the  
3 successors and assigns of City and shall be binding upon  
4 and enure to the benefit of the successors and permitted  
5 assigns of Assignee.

6                   36.4.   SEVERABILITY.    Should any of the  
7 covenants, conditions or agreements of this Agreement be  
8 held by a court of competent jurisdiction to be illegal or  
9 in conflict with any applicable law, or with any provision  
10 of the Charter of the City of Long Beach, the validity of  
11 the remaining portions or provisions shall not be affected  
12 thereby.

13                   36.5.   INTEGRATION.    This document constitutes  
14 the whole agreement between City and Assignee. There are  
15 no terms, obligations or conditions other than those  
16 contained herein. No modification or amendment of this  
17 Agreement shall be valid and effective, unless evidenced  
18 by an agreement in writing and signed by the parties with  
19 the same formalities and making specific reference to this  
20 Agreement.

21                   36.6.   NOTICES.    Any and all notices to be given  
22 under this Agreement, or otherwise, may be delivered  
23 personally or by facsimile transmission or by enclosing  
24 the same in a sealed envelope, addressed to the party  
25 intended to receive the same at its address designated  
26 herein, and by depositing in the United States Postal  
27 Service as registered or certified mail with postage  
28 prepaid. When so given, such notice shall be effective



John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

1 upon delivery, if served personally or by facsimile  
2 transmission, or from the date of mailing of the same.  
3 For the purpose thereof, unless otherwise provided by  
4 notice in writing from the respective party, the address  
5 of City, and the proper party to receive any such notices  
6 on its behalf, is the Executive Director, Long Beach  
7 Harbor Department, P.O. Box 570, Long Beach, California  
8 90801, and the address of Assignee is Metropolitan  
9 Stevedore Company, 211 Marine Avenue, Wilmington,  
10 California 90744.

11 36.7. MODIFICATIONS. Notwithstanding any of the  
12 provisions of this Agreement, the parties may hereafter,  
13 by mutual consent, agree to modifications thereof or  
14 additions thereto in writing. City shall have the right  
15 to grant reasonable extensions of time to Assignee for any  
16 purpose or for the performance of any obligations of  
17 Assignee hereunder.

18 36.8. CAPTIONS. The use of paragraph headings  
19 or captions in this Agreement is solely for the purpose of  
20 convenience, and the same shall be entirely disregarded in  
21 construing any part or portion of this Agreement.

22 37. EFFECTIVE DATE: The effective date of this  
23 Amended and Restated Preferential Assignment Agreement shall be  
24 the first day of the month next succeeding the month in which  
25 City shall have complied with the provisions of the Shipping

26 //

27 //

28 //

(Corporation)

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } SS.

On January 29, 1992 before me, the undersigned, a Notary Public in and for said State, personally appeared Brian V. Harrison and E. J. Kaveney

↑ STAPLE HERE ↓

(  ) 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 Treasurer/CFO President and CEO, Secretary or behalf of the corporation therein named and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Signature

*Gloria M. Radmilovich*

Gloria M. Radmilovich

Name (Typed or Printed)

L-10 (8/82)



(This area for official notarial seal)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Act of 1984 with respect to the filing of the marine terminal agreement.

METROPOLITAN STEVEDORE COMPANY,  
a corporation

Dated: Jan 29, 1992 By Brian Y. Harrison  
President  
President  
CHIEF EXECUTIVE OFFICER

Dated: Jan 29, 1992 By E. J. Kaveney  
Secretary  
EDWARD J. KAVENEY  
SECRETARY-TREASURER  
CHIEF FINANCIAL OFFICER

ASSIGNEE

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

Dated: March 12, 1992 By S. R. Dillenbeck  
S. R. Dillenbeck,  
Executive Director  
Long Beach Harbor Department

CITY

The foregoing Amended and Restated Preferential Assignment Agreement is hereby approved as to form this 13th day of February, 1992.

JOHN R. CALHOUN, City Attorney

By Simon C. Foster  
Senior Deputy

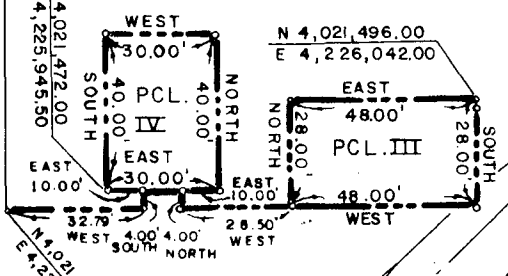
ECP:pw  
1/28/92  
M-6\METRO

John R. Calhoun  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
Telephone (213) 590-6061

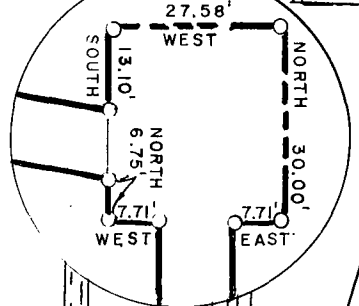
PANORAMA

DRIVE

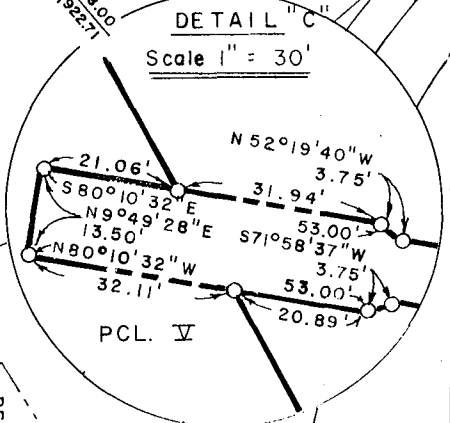
DETAIL  
Scale 1" = 50'



DETAIL "B"  
SCALE 1" = 40'



DETAIL "C"  
Scale 1" = 30'



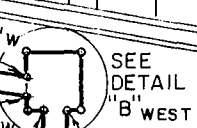
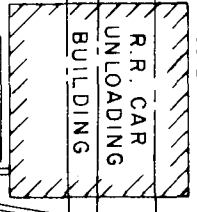
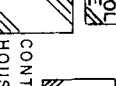
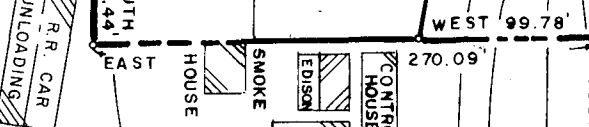
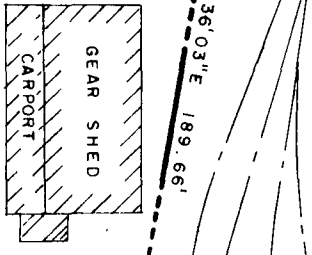
PANORAMA DRIVE  
 EAST 12.20'  
 NORTH 37.26'  
 WEST 16.20'  
 EAST 29.66'  
 NORTH 11°01'57"E  
 WEST 269.43'  
 SOUTH 210.48'  
 WEST 23.11'  
 SOUTH 20.48'  
 WEST 99.78'  
 SOUTH 270.09'  
 SOUTH 263.20'  
 WEST 15.00'  
 WEST 52.45'  
 SOUTH 130.44'  
 WEST 7.41'  
 EAST 21.50'  
 NORTH 29.32'  
 EAST 37.10'  
 NORTH 57.10'

PARCEL II

METROPOLITAN STEVEDORE CO.  
PREFERENTIAL ASSIGNMENT HD 4-62

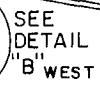
PCL. I  
APPLIED INDUSTRIAL MATERIALS CORP. (AIMCOR)  
LEASE AREA HD 4-89

PCL. I  
BEACON OIL CO.-LEASE AREA  
REF. HD 3-1



SEE DETAIL  
PCL. IV

PCL. III



SEE DETAIL "C"

GOLDEN WEST DIST.  
REF. DWG. NO. HD 4-31

BERTH 211A

N 4,021,542.41  
E 4,225,531.00

B

SG-5

SG-3

CHEVRON U.S.A. INC.  
REF. DWG. NO. HD 3406

# PIER G AVENUE SOUTHBOUND

METROPOLITAN STEVEDORE CO.  
PARCEL V

METROPOLITAN STEVEDORE CO.  
PARCEL I

PCL. III AIMCOR

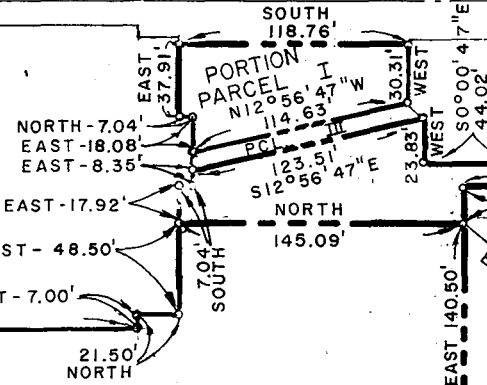
ATLANTIC RICHFIELD CO.  
REF. DWG. NO. HD 3327

PCL. II  
APPLIED INDUSTRIAL MATERIALS CORP. (AIMCOR)  
LEASE AREA HD 4-86

N12°13'03"W  
42.37'

SSM CARBON  
REF. DWG. NO. HD 3-221  
PARCEL I

PORTION  
PARCEL I



S11°02'08"E PCL II SSM CARBON  
22.52' HD 3-221 PARCEL II  
273.15' SOUTH

SULEXPOR CORP.  
REF. DWG. NO. HD 2-528

60'- EAST 640.00'

PARCEL V

SOUTH 992.86'

CONVEYORS

SOUTH 992.86'

GANTRY TRACKS

GREAT LAKES CARBON CORP LEASE

SOUTH 435.00'

PARCEL I

GANTRY TRACK

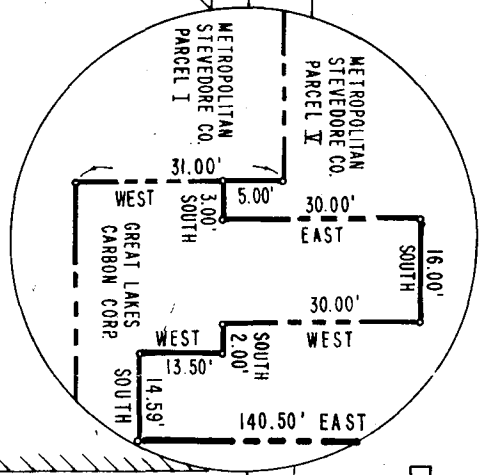
NORTH 1906.86'

BERTH 212

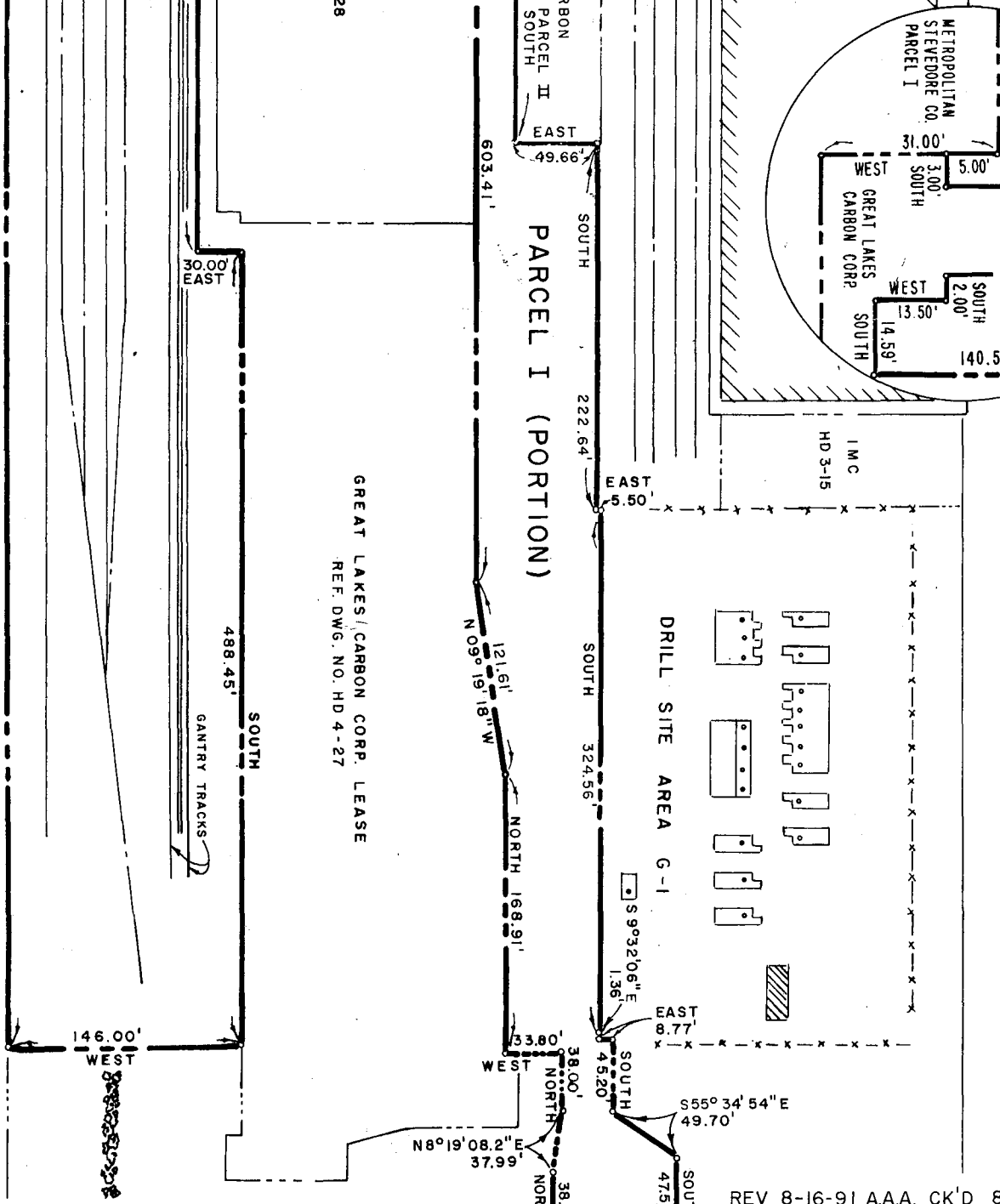
BERTH 213

BERTH

See Detail "A"



Detail "A"  
Not to Scale



PARCEL I = 410,280 SQ. FT.±  
 PARCEL II = 35,553 SQ. FT.  
 PARCEL III = 1,344 SQ. FT.  
 PARCEL IV = 1,200 SQ. FT.  
 PARCEL V = 74,000 SQ. FT.±  
 TOTAL AREA = 522,377 SQ. FT.±

REV 8-16-91 A.A.A. CK'D 8-16-91 G.D.S.  
 REV 7-14-86 M.L.A. CK'D 7-14-86 A.A.A.  
 REV. 03-14-85 J.G.K. CK'D 03-14-85 X.E.S.  
 REV. 7-20-82 A.A.A. CK'D 7-20-82 D.J.M.  
 REV 7-20-78 V.L.B. CK'D D.J.M. 7-20-78  
 REV. 2-18-77 F.E.N. CK'D D.J.M. 2-18-77  
 REV. 4-20-76 F.E.N. CK'D D.J.M. 4-20-76  
 REV. 8-20-74 F.E.N. CK'D D.J.M. 8-20-74  
 REV. 3-6-74 F.E.N. CK'D D.J.M. 3-8-74  
 REV. 1-24-74 F.E.N. CK'D D.J.M. 1-24-74  
 REV. 1-8-71 F.E.N.

PORT OF LONG BEACH - CALIFORNIA  
 OFFICE OF THE GENERAL MANAGER

SCALE 1" = 100' DATE 1-19-71  
 DESIGNED \_\_\_\_\_  
 DRAWN F.E.N. \_\_\_\_\_  
 CHECKED J.H.F. \_\_\_\_\_

PIER G BERTHS 212-215

METROPOLITAN STEVEDORE CO.  
 PREFERENTIAL ASSIGNMENT AREA  
 HD 3457

LONG BEACH CONTAINER TERMINAL, INC.  
PREFERENTIAL ASSIGNMENT  
REF. HD. 6-244



PIER — A — AVENUE

DEPT. OF OIL PROPERTIES  
OIL OPERATING AREA A-5-B  
REF. HD. 4-15

EAST  
201.70'

N 00°05' 02" W 1076.00'

PARCEL IX

N 00°05' 02" W 11076.00'

OIL OPERATING AREA A-3  
T.O.P.C.O. Z-1 NO.2 TANK FARM  
REF. DWG. HD. 337 I

DEPT. OF OIL PROP.  
OIL OPER. AREA A-2  
REF. HD. 3-132

G.P.S.  
MON 5046

N 00°05'02" W 35.95'  
N 89°59'28" E 527.80'

EAST 40' WEST 60.61'

R=430.00'  
346.32'

METROPOLITAN STEVEDORE CO.  
PREFERENTIAL ASSIGNMENT AREA  
T.P.O.B. N 4,022,223.00  
E 4,225,662.64 PCL. VI REF HD. 4-62

Parcel IX revised - See Amed #5 236,200

204,330 SQ. FT. = 4.691 ACRES

PORT OF LONG BEACH - CALIFORNIA  
OFFICE OF THE EXECUTIVE DIRECTOR

PIER A AVENUE

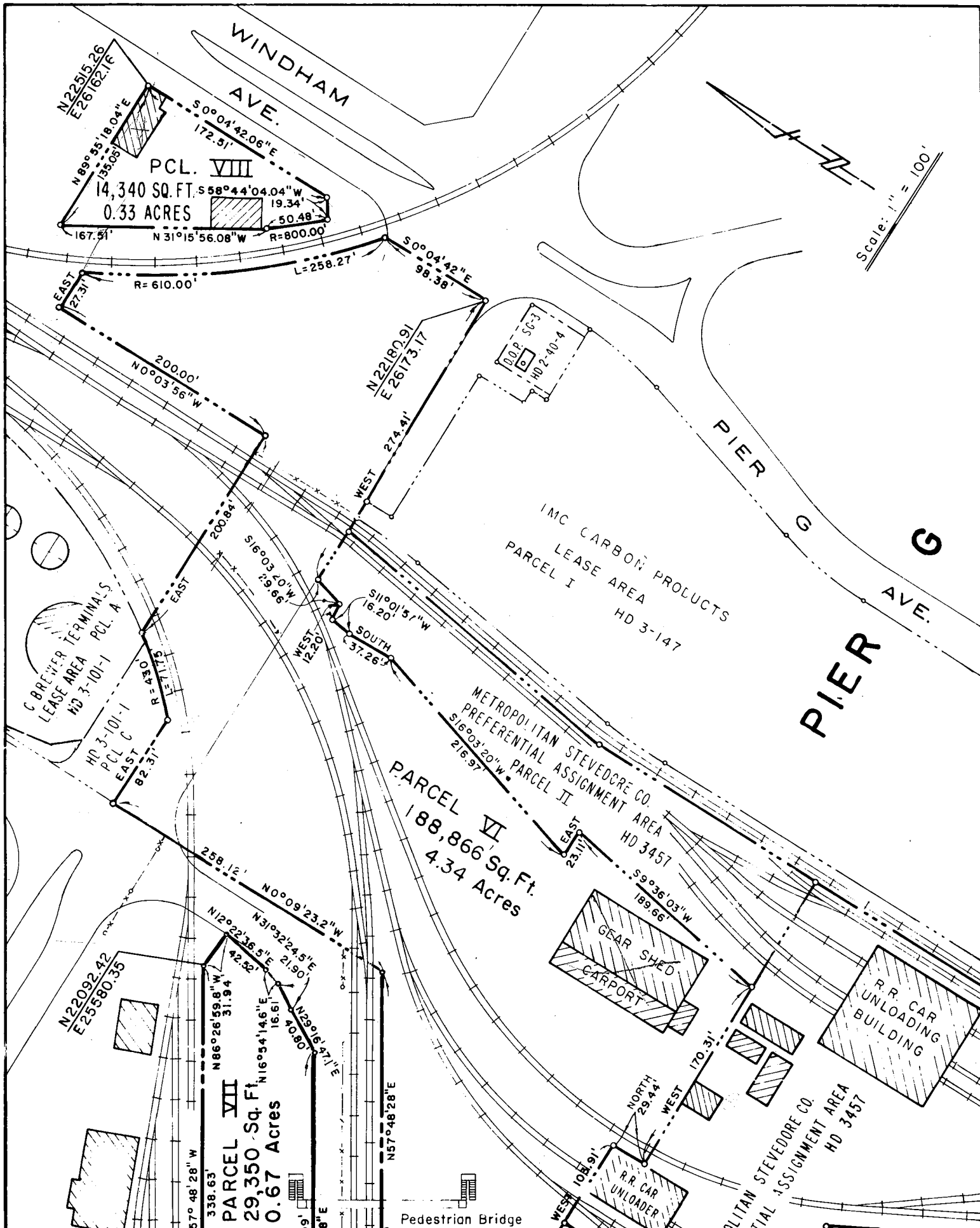
METROPOLITAN STEVEDORE CO.  
PREFERENTIAL ASSIGNMENT

SCALE 1" = 100'  
DESIGNED \_\_\_\_\_  
DRAWN G.D.S.  
CHECKED A.A.A.

DATE 2-20-91  
\_\_\_\_\_  
L.S. 6380

HD 4-92





N22515.26  
 E26162.16  
 N89°55'18.04"E  
 135.05'  
 S58°44'04.04"W  
 19.34'  
 50.48'  
 N31°15'56.08"W  
 R=800.00  
 L=258.27'  
 S0°04'42.06"E  
 172.51'  
**PCL. VIII**  
 14,340 SQ. FT.  
 0.33 ACRES

C BREWER TERMINALS  
 LEASE AREA  
 HD 3-101-1  
 PCL A  
 HD 3-101-1  
 PCL C  
 EAST  
 82.31'  
 R=430.00'  
 S16°03'20"W  
 99.29.66'  
 WEST  
 12.20'  
 SOUTH  
 37.26'  
 S11°01'57"W  
 16.20'  
 WEST  
 274.41'  
 N22180.91  
 E26173.17

METROPOLITAN STEVEDORE CO.  
 PREFERENTIAL ASSIGNMENT AREA  
 HD 3457  
 S16°03'20"W  
 216.97'  
 EAST  
 23.10'  
**PARCEL VI**  
 188,866 Sq. Ft.  
 4.34 Acres

N22092.42  
 E25580.35  
 N120°22'56.5"E  
 42.92'  
 N31°32'24.5"E  
 21.90'  
 N29°51'47.1"E  
 40.80'  
 N86°26'59.8"W  
 31.94'  
 N16°05'14.6"E  
 16.61'  
 N29°51'47.1"E  
 40.80'  
 N57°48'28"E  
 109.33'  
 57°48'28"W  
 338.63'  
**PARCEL VII**  
 29,350 Sq. Ft.  
 0.67 Acres

GEAR SHED  
 CARPORT

R.R. CAR UNLOADER

R.R. CAR UNLOADING BUILDING

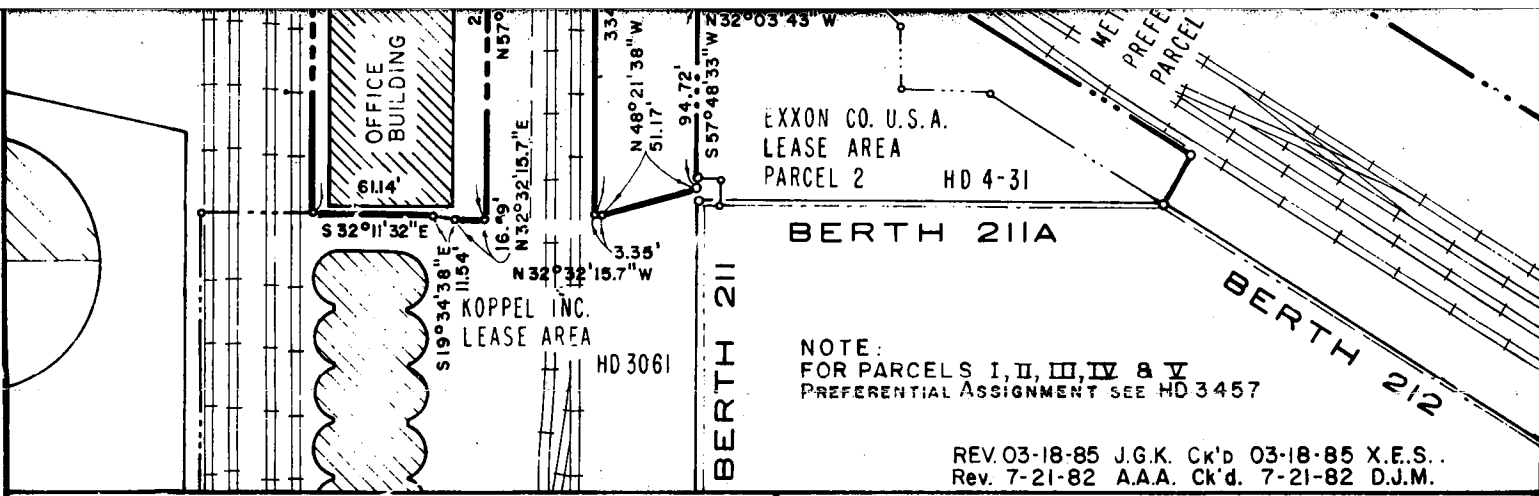
IMC CARBON PRODUCTS  
 LEASE AREA  
 PARCEL I  
 HD 3-147

WINDHAM AVE.  
 PIER G  
 PIER G  
 PIER AVE.

Scale: 1" = 100'

Pedestrian Bridge

METROPOLITAN STEVEDORE CO.  
 PREFERENTIAL ASSIGNMENT AREA  
 HD 3457

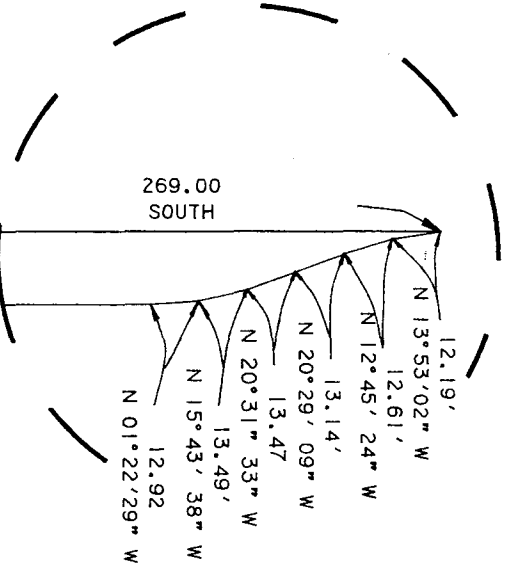


PORT OF LONG BEACH - CALIFORNIA  
 OFFICE OF THE GENERAL MANAGER  
 SCALE 1" = 100' DATE 11-10-80  
 DESIGNED \_\_\_\_\_  
 DRAWN *V.L. Burnett*  
 CHECKED \_\_\_\_\_

PIER G BERTHS 212 - 215  
 METROPOLITAN STEVEDORE CO.  
 PREFERENTIAL ASSIGNMENT AREA  
 HD 4-62



SCALE: 1"=50'  
DETAIL



ATLANTIC-RICHFIELD CO  
LEASE AREA  
H.D. 3327  
PARCEL I

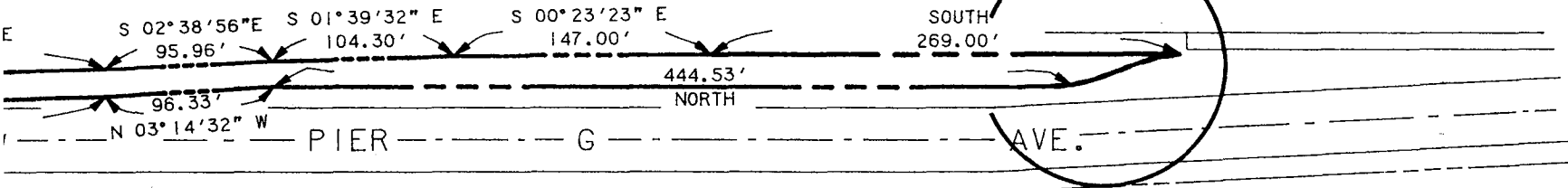
U.S.A.  
O  
56-5

G AVE. (SOUTHBOUND)

SEE DETAIL

CHEVRON U.S.A. INC.  
LEASE AREA  
REF. H.D. 3406

BEACON OIL CO.  
COKE STORAGE FACILITY  
LEASE AREA  
REF. DWG. H.D. 3-1  
PARCEL 1



SEA-LAND SERVICE, INC.  
PREFERENTIAL ASSIGNMENT  
REF. H.D. 8-292

APPLIED INDUSTRIAL MATERIALS CO.  
 (AIMCOR)  
 LEASE AREA  
 H.D. 4-86  
 PARCEL I

N 4,020,535.00  
 E 4,226,148.00

PARCEL IV

PIER

15.00'  
 SOUTH

WEST  
 137.67

162.67'  
 EAST

R=92.00'  
 L=144.51'

S 01°27'20"

S 0°30'54" E

R=76.00'  
 L=119.38

142.30'  
 NORTH

183.38'

183.54'

N 01°27'20"

SEA-LAND SERVICE INC.  
 PREFERENTIAL ASSIGNMENT  
 H.D. 2-665

TOTAL AREA = 20,596. SQ. FT

PORT OF LONG BEACH - CALIFORNIA  
 OFFICE OF THE EXECUTIVE DIRECTOR

1140 PIER G AVE.

METROPOLITAN STEVEDORE CO.  
 PREFERENTIAL ASSIGNMENT

SCALE 1" = 100"  
 DESIGNED \_\_\_\_\_  
 DRAWN G.D.S.  
 CHECKED A.A.A.

DATE 11-08-90  
*Edward S. Millwright*  
 L.S. 8189

H.D. 3-244

1 FIFTH AMENDMENT TO  
2 AMENDED AND RESTATED  
3 PREFERENTIAL ASSIGNMENT AGREEMENT  
4

5 THIS FIFTH AMENDMENT TO AMENDED AND RESTATED  
6 PREFERENTIAL ASSIGNMENT AGREEMENT ("Agreement") is made and  
7 entered into as of February 16, 2001, by and between the  
8 CITY OF LONG BEACH, a municipal corporation acting by and through  
9 its Board of Harbor Commissioners ("City"), pursuant to Ordinance  
10 No. HD-1835 adopted by said Board at its meeting of January 9,  
11 2001, and METROPOLITAN STEVEDORE COMPANY, a California  
12 corporation ("Assignee").

13 1. This Fifth Amendment is made and entered into with  
14 reference to the following facts and objectives:

15 1.1 City is the owner of certain marine terminal  
16 facilities at Pier G, Berths G212 to G215 inclusive, in the  
17 Harbor District of the City of Long Beach which include  
18 the wharves and adjacent wharf premises, ship loaders,  
19 stackers, conveyors, structures and appurtenant equipment  
20 for stockpiling and reclaiming bulk commodities ("Terminal  
21 Facilities"), and has granted a preferential assignment of  
22 the Terminal Facilities to Assignee.

23 1.2 As of March 12, 1992, the parties hereto  
24 entered into an Amended and Restated Preferential Assignment  
25 Agreement (Harbor Department Document No. HD-5000 and  
26 Federal Maritime Agreement No. 301-003939). On July 8,  
27 1993, June 4, 1994, October 2, 1994, and January 2, 1997,  
28 the parties amended the Amended and Restated Preferential

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

THIS IS A COPY  
ORIGINAL FILED IN  
THE RECORDS CENTER

1 Assignment Agreement. The Amended and Restated Preferential  
2 Assignment Agreement as so amended is referred to herein as  
3 the "Agreement".

4 1.3 In order to comply with recently enacted  
5 legislation and a recently amended rule of the South Coast  
6 Air Quality Management District, certain modifications and  
7 additions need to be made to some portions of the Terminal  
8 Facilities, including both physical alterations and a change  
9 in the permitted use of a portion of the Terminal  
10 Facilities.

11 1.4 The parties agree that certain of such  
12 modifications and additions to the Terminal Facilities can  
13 be made more efficiently and with less disruption of ongoing  
14 terminal operations if made by Assignee.

15 1.5 The parties intend by this Fifth Amendment to  
16 set forth all of their understandings and agreements  
17 regarding changes to the permitted use of the Terminal  
18 Facilities, design and construction of the agreed  
19 modifications and additions, allocation of the costs of such  
20 work, and maintenance responsibilities.

21 **2.** Paragraph 4.1 of the Agreement is deleted and a  
22 new paragraph 4.1 is added to read:

23  
24 "4.1 The 150,000 metric ton capacity storage  
25 shed constructed by City on Parcel IX of the Premises  
26 and sometimes referred to as the "coal shed" may be  
27 used by Assignee for either the storage and handling of  
28 coal or the storage and handling of petroleum coke;

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

1           provided, if used by Assignee for petroleum coke, the  
2 shed shall be sub-assigned to one or more petroleum  
3 coke producers or marketers for storage of its or their  
4 product. City hereby expressly approves sub-  
5 assignments of one half of the shed to AIMCOR, Carbon  
6 Products Group, and one half of the shed to TOSCO, each  
7 for a period of ten (10) years commencing as of October  
8 1, 2000. Any further or different sub-assignment shall  
9 be subject to the express written approval of City in  
10 its absolute discretion."  
11

12           **3.** Paragraph 9 of the of the Agreement is deleted in  
13 its entirety and a new paragraph 9 is added to read:  
14

15           **"9. IMPROVEMENTS:** In order to comply with recently  
16 enacted legislation and new rules of regulatory agencies,  
17 City and Assignee have agreed to design and construct  
18 certain modifications and improvements to the Terminal  
19 Facilities upon the following terms and conditions.

20           9.1 Assignee, at its cost, has constructed  
21 the work described in Exhibit "A-1" in accordance with  
22 terms and conditions set forth in City's Harbor  
23 Development Permit No. HDP-00-021. Assignee shall  
24 provide to City a copy of all "as-built" drawings and  
25 other records relating to such work.

26           9.2 City shall reimburse Assignee for the  
27 work described in Exhibit "A-1", in the form of credits  
28 against rent and other amounts payable to City,

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

1           provided, the total amount of such credits shall not  
2           exceed the sum of Four Hundred Thousand Dollars  
3           (\$400,000.00).

4                       9.3 Assignee, at its cost, may contract for  
5           the design and construction of the work described in  
6           Exhibit "A-2" ("New Work"). Such work consists of  
7           modifications to City's coal shed and appurtenances to  
8           permit or make more efficient the handling of petroleum  
9           coke at such facility. Assignee agrees that any work,  
10          including without limitation, the New Work or work  
11          similar thereto, which consists of modifications to  
12          City's coal shed and appurtenances to permit or make  
13          more efficient the handling of petroleum coke at such  
14          facility (collectively the "Proposed Work") shall be  
15          done at Assignee's cost. Assignee shall submit to the  
16          Executive Director or his designee for approval all  
17          proposed contracts for design and performance of the  
18          Proposed Work, which approval shall not be unreasonably  
19          withheld. The Proposed Work shall also be subject to  
20          such conditions and limitations as may be set forth in  
21          a Harbor Development Permit ("Permit") to be issued by  
22          the Board of Harbor Commissioners for such work in  
23          accordance with the provisions of Section 1215 of the  
24          Long Beach City charter. Upon receipt of such approval  
25          and issuance of such Development Permit, Assignee shall  
26          promptly commence and diligently prosecute to  
27          completion all of the elements of the Proposed Work.

28                       9.3.1 Assignee shall keep the Premises



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

1 free and clear of any mechanic's, materialman's or  
2 similar lien for any work done, labor performed or  
3 material furnished by or for Assignee, and shall  
4 defend, indemnify and hold City, its Board of  
5 Harbor Commissioners (individually and collec-  
6 tively) and its officers, agents and employees  
7 harmless from and against all claims, liens,  
8 demands, causes of action, liability, loss, costs  
9 and expense, including reasonable attorney's fees,  
10 of whatsoever kind or nature for any such work  
11 done, labor performed or materials furnished on the  
12 Premises to Assignee. Assignee shall have the right  
13 to contest the correctness or the validity of any  
14 such lien if, immediately on demand by City,  
15 Assignee procures and records a lien release bond  
16 issued by a corporation authorized to issue surety  
17 bonds in California in an amount equal to one and  
18 one-half times the amount of the claim or lien.  
19 The bond shall meet the requirements of Civil Code  
20 Section 3143 and shall provide for the payment of a  
21 sum that the claimant may recover on the claim  
22 (together with costs of suit, if claimant recovers  
23 in the action).

24 9.3.2 Assignee shall notify City twenty  
25 (20) days prior to commencement of construction to  
26 enable City to post on the Premises and record a  
27 Notice of Nonresponsibility under California Civil  
28 Code Section 3094, or any other similar notice

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

1 which may be allowed by law.

2 9.3.3 All Proposed Work shall be  
3 accomplished expeditiously, in a good and  
4 workmanlike manner within standards acceptable in  
5 the community for similar construction. Assignee  
6 shall conduct its construction so that such  
7 activity will in no way interfere with the normal  
8 operation and use of the Port of Long Beach by City  
9 and other persons and organizations entitled to use  
10 of the same.

11 9.3.4 If, during the construction of the  
12 Proposed Work, Assignee shall discover or believe  
13 that any materials being excavated from the  
14 Premises contain hazardous material as that term is  
15 defined in paragraph 29.6 below, Assignee, at its  
16 cost, shall (i) promptly notify the Executive  
17 Director of Assignee's discovery or belief; (ii) at  
18 the request of Executive Director, initiate  
19 chemical and/or physical analyses of the suspected  
20 hazardous material; (iii) promptly submit all  
21 laboratory or other test results upon receipt  
22 thereof to the Executive Director; (iv) develop and  
23 submit, for approval by the Executive Director, a  
24 remediation plan providing for the disposal and/or  
25 treatment of the hazardous material; (v) treat and  
26 dispose of or remove the hazardous material in  
27 accordance with regulations and orders of  
28 governmental agencies having jurisdiction; (vi) if

1 hazardous material is removed, replace the same  
2 with clean structurally suitable fill material and  
3 cause the excavation to be backfilled and  
4 compacted; and (vii) promptly submit copies of all  
5 waste manifests to the Executive Director.

6 9.3.5 Upon completion of construction,  
7 the modifications and additions constituting the  
8 Proposed Work shall become the property of City.

9 9.4 Subject to further approvals by the Board  
10 of Harbor Commissioners of each specific modification  
11 and improvement listed in Exhibit "B", City, at its  
12 cost, shall design and construct the modifications and  
13 improvements described in Exhibit "B".

14 9.5 The actual total amount reimbursed by  
15 City to Assignee under the provisions of paragraph 9.2  
16 and the actual total amount expended by City pursuant  
17 to paragraph 9.4 shall be added to and be deemed part  
18 of the total cost of improvements to the Terminal  
19 Facility and shall be used to determine the Guaranteed  
20 Minimum Tonnage as provided in paragraph 7.1."

21  
22 4. Paragraph 17 of the Agreement is amended in its  
23 entirety to read:

24  
25 "17. OBSERVE APPLICABLE LAWS: At all times in its  
26 use and occupancy of the Premises and in the conduct of its  
27 operations thereon, Assignee, at its cost, shall comply with  
28 all applicable federal, state, regional and municipal laws,

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

1 ordinances and regulations (including but not limited to the  
2 City Charter, the Long Beach Municipal Code and Tariff No.  
3 4) and obtain all requisite permits for the construction of  
4 improvements on the Premises and for the conduct of its  
5 operations thereon.

6 17.1 Without limiting the foregoing, Assignee  
7 shall ensure that the Premises, and Assignee's  
8 operations on the Premises, fully comply with Rule 1158  
9 of the South Coast Air Quality Management District, as  
10 such rule now exists or may in the future be amended,  
11 or any similar rule relating to control of petroleum  
12 coke dust emissions which may supersede said Rule 1158.

13 17.2 Without limiting the foregoing, Assignee  
14 shall comply with applicable provisions of the  
15 Americans with Disabilities Act (42 USCS Sections  
16 12101, et seq.) ("Act") and regulations promulgated  
17 pursuant thereto in Assignee's use of the Premises and  
18 operations conducted thereon. Additionally, as between  
19 City and Assignee, Assignee shall be solely responsible  
20 for assuring that the Premises are in compliance with  
21 applicable provisions of said Act and related  
22 regulations and shall hold City harmless from and  
23 against any claims of failure of the Premises to comply  
24 with the Act and/or related regulations."  
25

26 5. Drawing HD 4-92, dated 2-20-91 and depicting Parcel  
27 IX of the Premises, is replaced with Drawing HD 4-92 (Rev. 12-18-  
28 00) attached to this Fifth Amendment and incorporated by this

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

1 reference.

2           6. The parties acknowledge that certain operating and  
3 maintenance standards applicable to the Premises need to be  
4 developed and agreed upon in order to ensure compliance with  
5 SCAQMD Rule 1158 and other regulations. In conjunction with the  
6 required renegotiation of compensation for the segment of the  
7 term commencing April 1, 2001, the parties agree to negotiate in  
8 good faith: (i) facility "housekeeping" standards; (ii) operating  
9 and maintenance standards; (iii) the requirement for Assignee to  
10 submit to City an annual budget for housekeeping and maintenance;  
11 and (iv) provisions regarding annual or other periodic  
12 inspections by City.

13           7. Except as expressly provided in this Fifth Amend-  
14 ment, all of the terms and conditions of the Agreement shall  
15 remain unchanged and in full force and effect.

METROPOLITAN STEVEDORE COMPANY,  
a California corporation

19 28 DECEMBER, 2000

By: *J. Callahan*  
Name: JAMES R. CALLAHAN  
Title: PRESIDENT, CEO + CFO

22 DECEMBER 28, 2000

By: *Albert J. Garner*  
Name: ALBERT J. GARNER  
Title: VICE PRESIDENT

ASSIGNEE

26 //

27 //

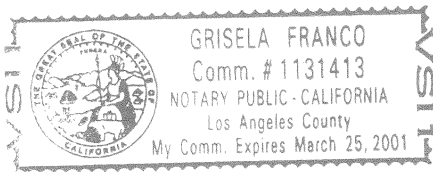
28 //

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Los Angeles } ss.

On December 28, 2000, before me, Grisela Franco Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared James R. Callahan,  
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.

Grisela Franco  
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: Fifth Amendment to Amended and Restated Preferential Assignment Agreement

Document Date: December 28, 2000 Number of Pages: 13

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: James R. Callahan

- Individual
- Corporate Officer — Title(s): President, CEO & CFO
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: Metropolitan Skredore Company

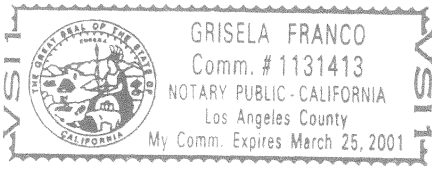
**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Los Angeles } ss.

On December 28, 2000, before me, Grisele Franco Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Albert J. Garnier  
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.

Grisele Franco  
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: Fifth Amendment to Amended and Restated Preferential Assignment Agreement  
Document Date: December 28, 2000 Number of Pages: 13

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: Albert J. Garnier  
 Individual  
 Corporate Officer — Title(s): Vice President  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: Metropolitan Stevedore Company

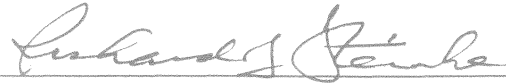


Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

2-16, 2001

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

CITY

The foregoing Fifth Amendment is hereby approved as to form.

ROBERT E. SHANNON, City Attorney

February 14, 2001

By:   
Charles M. Gale Deputy

RLL:CMG:dmp:pw  
12/26/00  
M-16\METRO.1\00-01344



## PIER G BULKLOADER TERMINAL IMPROVEMENTS

### **EXHIBIT A - 1      Rule 1158 Improvements Completed by June 11, 2000:**

1. Truck Wash #1 Water Sprays
2. New Sulex Truck Wash
3. Rotary Rail & Truck Dump Interim Enclosure & Water Misting System
4. Shiploader #1 Modifications
5. Shiploader #2 Modifications
6. Paving of Water Treatment Area
7. Coal Barn Modifications (for pet coke storage)
  - Electrification of doors
  - Doorway misting system

## PIER G BULKLOADER TERMINAL IMPROVEMENTS

### **EXHIBIT A – 2      Conversion of Coal Shed for Pet Coke Storage by Metro**

1.      New Truck dump
2.      Modifications to Conveyors 23 & 24
3.      Conveyer 22 Modifications
4.      Water Spray/Misting at top of piles

## PIER G BULKLOADER TERMINAL IMPROVEMENTS

### **EXHIBIT B            Improvements by Port**

1. Rotary Rail & Truck Dump permanent recladding.
2. Transfer Tower #1 Enclosure
3. Transfer Tower #2 Extension (for Coal Shed conversion to pet coke storage)
4. Transfer Tower #2 Enclosure
5. Enclose and Modify Conveyors 15 & 15B
6. Rail yard and Drainage Improvements
7. New Shiploader Option #9 of the Shiploader options
8. New Shiploader Improvements:
  - a. Wharf Upgrade
  - b. Conveyor C5 Modifications
  - c. New Conveyor 5D (Replacement for Conveyor G9)
  - d. New Conveyor 5A
  - e. New Transfer Tower
  - f. Electrical Service
9. Waste Pet Coke Enclosure
10. Pad #14 South Ramp relocation:
11. Paving of Pad #7 and under 5C & 5D
12. Pad #14 Conveyors

1 FIFTH AMENDMENT TO  
2 AMENDED AND RESTATED  
3 PREFERENTIAL ASSIGNMENT AGREEMENT  
4

5 THIS FIFTH AMENDMENT TO AMENDED AND RESTATED  
6 PREFERENTIAL ASSIGNMENT AGREEMENT ("Agreement") is made and  
7 entered into as of February 16, 2001, by and between the  
8 CITY OF LONG BEACH, a municipal corporation acting by and through  
9 its Board of Harbor Commissioners ("City"), pursuant to Ordinance  
10 No. HD-1835 adopted by said Board at its meeting of January 9,  
11 2001, and METROPOLITAN STEVEDORE COMPANY, a California  
12 corporation ("Assignee").

13 1. This Fifth Amendment is made and entered into with  
14 reference to the following facts and objectives:

15 1.1 City is the owner of certain marine terminal  
16 facilities at Pier G, Berths G212 to G215 inclusive, in the  
17 Harbor District of the City of Long Beach which include  
18 the wharves and adjacent wharf premises, ship loaders,  
19 stackers, conveyors, structures and appurtenant equipment  
20 for stockpiling and reclaiming bulk commodities ("Terminal  
21 Facilities"), and has granted a preferential assignment of  
22 the Terminal Facilities to Assignee.

23 1.2 As of March 12, 1992, the parties hereto  
24 entered into an Amended and Restated Preferential Assignment  
25 Agreement (Harbor Department Document No. HD-5000 and  
26 Federal Maritime Agreement No. 301-003939). On July 8,  
27 1993, June 4, 1994, October 2, 1994, and January 2, 1997,  
28 the parties amended the Amended and Restated Preferential

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

THIS IS A COPY  
ORIGINAL FILED IN  
THE RECORDS CENTER

Document No. HD-5000-E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST AMENDMENT TO  
SECOND AMENDED AND RESTATED  
PREFERENTIAL ASSIGNMENT AGREEMENT**

THIS FIRST AMENDMENT TO SECOND AMENDED AND RESTATED  
PREFERENTIAL ASSIGNMENT AGREEMENT is made and entered into as of  
August 9, 2006 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- 1961 adopted  
by said Board at its meeting of June 19, 2006 and  
**METROPOLITAN STEVEDORE COMPANY**, a California corporation  
("**Assignee**").

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

1.1 City is the owner of certain marine terminal  
facilities at Pier G, Berths G212 to G215 inclusive, in the  
Harbor District of the City of Long Beach which include the  
wharves and adjacent wharf premises, ship loaders, stackers,  
conveyors, structures and appurtenant equipment for  
stockpiling and reclaiming bulk commodities ("Terminal  
Facilities"), and has granted a preferential assignment of the  
Terminal Facilities to Assignee.

1.2 As of November 1, 2002, the parties hereto  
entered into a Second Amended and Restated Preferential  
Assignment Agreement (Harbor Department Document HD-6655) (the  
"Agreement").

1.3 Paragraph 8.3 of the Agreement provides, in  
part, that "For the balance of the term, the Guaranteed

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 Minimum Tonnage Dollar Equivalents, Minimum Annual Tariff  
2 Payments, and land rent for Parcels IX, XA, XB, XC and XD  
3 shall be renegotiated and adjusted with an effective date for  
4 each such adjustment of April 1, 2006, and April 1, 2011."

5 1.4 The parties to this Agreement have decided to  
6 renegotiate and adjust "the Guaranteed Minimum Tonnage Dollar  
7 Equivalents, Minimum Annual Tariff Payments, and land rent for  
8 Parcels IX, XA, XB, XC and XD" with effective dates for each  
9 such adjustment of April 1, 2001 (as a result of negotiations  
10 in 2001-02 and in 2006), April 1, 2006 (for paragraph 8.3 of  
11 the Agreement (see paragraph 5 below)), April 1, 2007 (for  
12 four (4) years) and April 1, 2011 (for five (5) years). The  
13 adjustments for these four dates, which adjustments are  
14 described below, are in response to Assignee's request to  
15 extend the current compensation schedule for an additional  
16 year. Assignee has advised City of the unexpected time the  
17 LAXT facility has remained open and the resulting impacts on  
18 throughput at the Pier G facilities.

19 2. Effective April 1, 2001, the introductory portion of  
20 paragraph 8 of the Agreement is deleted and restated in its  
21 entirety to read as follows:

22 "8. **TARIFF GUARANTEE, LAND RENTAL, AND COMPENSATION**

23 **RENEGOTIATIONS:** The parties agree that the minimum tariff  
24 charges to be paid by Assignee pursuant to the provisions of  
25 paragraphs 5, 6, and 7 during the six (6) year portion of the  
26 term commencing April 1, 2001 and ending March 31, 2007 shall  
27 be the dollar value equivalent of twenty-six million seven  
28 hundred thousand (26,700,000) metric tons ("Guaranteed Minimum

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

1 Tonnage"). Land rent for Parcels IX, XA, XB, XC, and XD is  
2 not included in such payments, but rather is in addition  
3 thereto."

4 3. Effective April 1, 2001, paragraph 8.1 is deleted  
5 and restated in its entirety to read as follows:

6 "8.1 Calculations for Guaranteed Minimum Tonnage  
7 Dollar Equivalent. The dollar value equivalent of the  
8 Guaranteed Minimum Tonnage ("Guaranteed Minimum Tonnage Dollar  
9 Equivalent") shall be calculated as follows:

10 The first eighteen million (18,000,000) metric  
11 tons of the Guaranteed Minimum Tonnage shall be  
12 multiplied by the total of the wharfage charge set forth  
13 in Item 356 of Tariff No. 4 and the equipment rental  
14 charge set forth in Item 515 of Tariff No. 4 (the "First  
15 Component"). Guaranteed Minimum Tonnage in excess of the  
16 first eighteen million (18,000,000) metric tons shall be  
17 multiplied by the wharfage rate set forth in Item 364 of  
18 Tariff No. 4 (the "Second Component"). Notwithstanding  
19 anything to the contrary appearing herein, in calculating  
20 the Guaranteed Minimum Tonnage Dollar Equivalent for the  
21 period from April 1, 2001 through March 31, 2007, the  
22 wharfage rate for Item 364 shall be ninety cents (\$0.90)  
23 per metric ton. The sum of the First Component and the  
24 Second Component shall constitute the Guaranteed Minimum  
25 Tonnage Dollar Equivalent.

26 In the event the wharfage charges set forth in  
27 Item 356 of Tariff No. 4 or the equipment rental charge  
28 set forth in Item 515 of Tariff No. 4 are changed during

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

1 the period from April 1, 2001 through March 31, 2007, the  
2 First Component shall be adjusted as follows: (i)  
3 multiply each applicable wharfage charge and equipment  
4 rental charge by the number of days each such charge is  
5 in effect during the period from April 1, 2001 through  
6 March 31, 2007; (ii) add the results of said  
7 multiplications; and (iii) divide by 2190. The result of  
8 this calculation shall then be multiplied by eighteen  
9 million (18,000,000) metric tons."

10 4. Effective April 1, 2001, paragraph 8.2 is deleted  
11 and restated in its entirety to read as follows:

12 "8.2 Refund of Make-up Payments. In the event that  
13 during the period April 1, 2001 through March 31, 2007, the  
14 tariff charges paid by Assignee pursuant to the provisions of  
15 paragraphs 5, 6, and 7 ("Tariff Payments") are greater than  
16 the Guaranteed Minimum Tonnage Dollar Equivalent, certain  
17 Make-up Payments, if any such payments were made, shall be  
18 returned to Assignee within thirty (30) days of Assignee's  
19 final payment for the period April 1, 2001 through  
20 March 31, 2007 pursuant to the following formula: for the  
21 period April 1, 2001 through March 31, 2007 the lesser of (a)  
22 Tariff Payments minus Guaranteed Minimum Tonnage Dollar  
23 Equivalent; or (b) Make-up Payments made by Assignee. Rent  
24 for Parcels IX, XA, XB, XC, and XD is not included in Tariff  
25 Payments but rather is in addition thereto."

26 5. Effective April 1, 2006, paragraph 8.3 is deleted  
27 and restated in its entirety to read as follows:

28 "8.3 Adjustments. For the balance of the term, the



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

1           Guaranteed Minimum Tonnage Dollar Equivalents, Minimum Annual  
2           Tariff Payments, and land rent for Parcels IX, XA, XB, XC and  
3           XD shall be renegotiated and adjusted with an effective date  
4           for each such adjustment of April 1, 2007 (for four (4)  
5           years), and April 1, 2011 (for five (5) years). If the  
6           parties are unable to agree on the Guaranteed Minimum Tonnage  
7           Dollar Equivalents, Minimum Annual Tariff Payments, and/or the  
8           land rental for Parcels IX, XA, XB, XC and XD, the amount  
9           thereof shall be determined by arbitration in accordance with  
10          the provisions of paragraph 12."

11           6.     Effective April 1, 2001, paragraph 8.5 is deleted  
12          and restated in its entirety to read as follows:

13                   **"8.5 Shortfall.** In the event Assignee fails to pay  
14                   to City Tariff Payments in an amount equal to or greater than  
15                   the Guaranteed Minimum Tonnage Dollar Equivalent for tonnage  
16                   handled at or through the premises during the period  
17                   April 1, 2001 through March 31, 2007, Assignee shall pay to  
18                   City within thirty (30) days after the end of such six (6)  
19                   year segment an amount equal to the Guaranteed Minimum Tonnage  
20                   Dollar Equivalent minus Tariff Charges previously paid by  
21                   Assignee ("Shortfall")."

22           7.     Except as express provided in this First Amendment,


23    //  
24    //  
25    //  
26    //  
27    //  
28    //

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

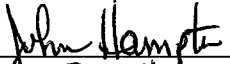
1 all of the terms and conditions of the Agreement shall remain  
2 unchanged and in full force and effect.

3 METROPOLITAN STEVEDORE COMPANY, a  
4 California corporation

5 MAY 12, 2006

By:   
Name: ALBERT J. GARNICK  
Title: CHIEF OPERATING OFFICER

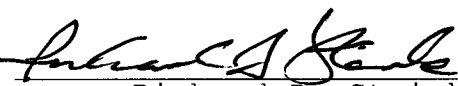
6  
7 MAY 12, 2006

By:   
Name: JOHN HAMPTON  
Title: CHIEF FINANCIAL OFFICER

8 ASSIGNEE

9  
10 CITY OF LONG BEACH, a municipal  
11 corporation, acting by and through  
12 its Board of Harbor Commissioners

13 8-9, 2006

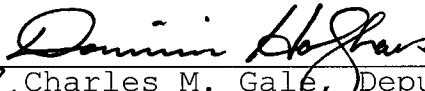
By:   
Richard D. Steinke,  
Executive Director  
Long Beach Harbor Department

16 CITY

17 The foregoing First Amendment to Second Amended and  
18 Restated Preferential Assignment Agreement is hereby approved.

19 ROBERT E. SHANNON, City Attorney

20  
21 8/7, 2006

By:   
for Charles M. Gale, Deputy

22  
23  
24  
25  
26  
27  
28 CMG:rjr 04/27/06 #06-01591  
L:\APPS\CtyLaw32\WPDOS\D027\P004\00088750.WPD

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

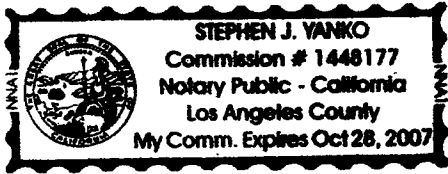
County of LOS ANGELES

On MAY 12, 2006 before me, STEPHEN J. YANKO, NOTARY PUBLIC,

personally appeared ALBERT J. GARNIER & JOHN HAMPTON

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

Stephen J. Yanko  
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 SECOND AMENDED & RESTATED PREF. ASSIGN. AGMT

Document Date: MAY 12, 2006 Number of Pages: SIX

Signer(s) Other Than Named Above: R. STEINKE & C. GALE

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: ALBERT J. GARNIER

- Individual
- Corporate Officer — Title(s): C.D.O.
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



Signer's Name: JOHN HAMPTON

- Individual
- Corporate Officer — Title(s): C.F.O.
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



SECOND AMENDED AND RESTATED PREFERENTIAL ASSIGNMENT AGREEMENT

between

CITY OF LONG BEACH

and

METROPOLITAN STEVEDORE COMPANY

Document No. HD- 6655

SECOND AMENDED AND RESTATED PREFERENTIAL ASSIGNMENT AGREEMENT

between

CITY OF LONG BEACH

and

METROPOLITAN STEVEDORE COMPANY

TABLE OF CONTENTS

<u>Paragraph No. and Title</u>	<u>Page No.</u>
1. Recitals . . . . .	1
1.1 Terminal Facilities . . . . .	1
1.2 Preferential Assignment . . . . .	1
1.3 Amended and Restated Preferential Assignment . . . . .	2
1.4 Further Amendment . . . . .	2
1.5 Entire Agreement . . . . .	2
1.6 The Premises . . . . .	3
2. Term . . . . .	3
3. Premises . . . . .	3
3.1 Wharf Assignment . . . . .	3
3.2 Maintenance Service Facility . . . . .	3
3.3 Maintenance Service Facility and Harbor Department-owned Office Building . . . . .	4
3.4 Coal Shed . . . . .	4
3.5 Ingress/Egress . . . . .	4
3.6 Drawings . . . . .	4
3.7 Reservation . . . . .	5
3.8 Use of Parcels III and IV . . . . .	5
3.9 Pedestrian Bridge . . . . .	6
3.10 Boundary Lines . . . . .	6
3.11 Mineral Rights . . . . .	6
3.12 Restrictions . . . . .	6
3.13 Inspection . . . . .	7
4. Use of Premises . . . . .	7
4.1 Use . . . . .	8
4.2 Temporary Assignments . . . . .	8
4.3 Equipment and Facilities . . . . .	9
4.4 Temporary Assignees . . . . .	9
4.5 No Other Use . . . . .	9
4.6 Operator/Stevedore . . . . .	10
4.7 Use of Conveyor Systems and Wharves . . . . .	11
5. Tariff Charges - Books and Records . . . . .	11
5.1 Statement Following Departure . . . . .	12
5.2 Monthly Statement . . . . .	12
5.3 Alameda Corridor Reports . . . . .	12
5.4 Accident Reports . . . . .	13
5.5 Additional Reports . . . . .	13
5.6 Financial Statements . . . . .	13
5.7 Stockpiled Commodities . . . . .	14
5.8 Invoice . . . . .	14
5.9 Land Rent for Parcels IX, XA, XB, XC and XD . . . . .	15
5.10 Delinquent Payments . . . . .	16
6. Equipment Rental Charges . . . . .	16

TABLE OF CONTENTS

Paragraph No. and Title	Page No.
7. Minimum Annual Tariff Payments . . . . .	17
8. Tonnage Guarantee, Land Rental, and Compensation Renegotiations .	17
8.1 Calculations for Guaranteed Minimum Tonnage Dollar Equivalent	18
8.2 Refund of Make-up Payments . . . . .	19
8.3 Adjustments . . . . .	19
8.4 Shipping From Any Other Facility . . . . .	20
8.5 Shortfall . . . . .	20
8.6 Damage, Seizure or Prohibition . . . . .	20
8.7 Labor Disturbance . . . . .	21
9. Maintenance and Repairs . . . . .	22
9.1 Maintenance Plans and Budget . . . . .	22
9.2 No Duty to Repair . . . . .	23
9.3 Rail Trackage . . . . .	24
9.4 Negligence . . . . .	24
9.5 Failure to Perform . . . . .	24
9.6 Piers, Wharves, and Bulkheads . . . . .	24
9.7 Compliance . . . . .	25
9.8 Waiver . . . . .	25
9.9 Housekeeping . . . . .	26
10. Improvements . . . . .	26
10.1 Modifications/Improvements . . . . .	26
10.2 Costs of Improvements . . . . .	27
11. Property and Cargo Under Assignee's Control . . . . .	27
12. Arbitration . . . . .	27
12.1 Negotiation Criteria . . . . .	28
12.2 Arbitration Procedures . . . . .	28
13. Tackle and Labor . . . . .	29
14. Access to Premises . . . . .	29
15. Rights of Way . . . . .	29
16. Indemnification . . . . .	30
17. Liability Insurance . . . . .	31
17.1 Provisions . . . . .	31
17.2 Premiums/Deductibles . . . . .	32
17.3 Evidence of Insurance . . . . .	33
17.4 Timing . . . . .	33
17.5 Not Limitation . . . . .	33
18. Observe Applicable Laws . . . . .	33
18.1 Rule 1158 . . . . .	34
18.2 Americans with Disabilities Act . . . . .	34
19. Waiver of Liability . . . . .	34
20. Load Limit . . . . .	35
21. Taxes . . . . .	35
22. Liens . . . . .	36
23. Signs . . . . .	36
24. Termination for Government Use . . . . .	36
25. Termination by Court Decree . . . . .	37
26. Relocation Assistance . . . . .	37
27. Non-Discrimination . . . . .	37
28. Waiver of Claims . . . . .	38

TABLE OF CONTENTS

<u>Paragraph No. and Title</u>	<u>Page No.</u>
29. Conduct of Operations . . . . .	38
30. Environmental Compliance . . . . .	39
30.1 Hazardous Materials, Substances and Wastes . . . . .	40
30.2 Noncompliance . . . . .	40
30.3 Liability for Noncompliance . . . . .	41
30.4 Environmental Audits . . . . .	41
30.6 Maintenance Areas . . . . .	42
31. Assignment . . . . .	42
32. Fire Protection . . . . .	42
33. Utilities . . . . .	43
34. Default . . . . .	43
35. Delivery of Possession . . . . .	44
36. Holding Over . . . . .	45
37. Miscellaneous Provisions . . . . .	45
37.1 Waivers . . . . .	45
37.2 Law Governing . . . . .	46
37.3 Successors . . . . .	46
37.4 Severability . . . . .	46
37.5 Integration . . . . .	46
37.6 Notices . . . . .	46
37.7 Modifications . . . . .	47
37.8 Captions . . . . .	47

Attachments

- DRAWING HD-3457 (REV. 8/16/91)
- DRAWING HD 4-62 (REV. 3/11/99)
- DRAWING HD 4-92 (REV. 12/18/00)
- DRAWING HD 3-244 (REV. 11/18/90)

Exhibits

- A MAINTENANCE STANDARD GUIDELINES
- B MODIFICATIONS AND IMPROVEMENTS

1 SECOND AMENDED AND RESTATED  
2 PREFERENTIAL ASSIGNMENT AGREEMENT

3 METROPOLITAN STEVEDORE COMPANY  
4 720 EAST "E" STREET  
5 WILMINGTON, CALIFORNIA 90744  
6 (310) 816-6500  
7 Fax (310) 816-6519

8 THIS SECOND AMENDED AND RESTATED PREFERENTIAL

9 ASSIGNMENT AGREEMENT is made and entered into as of November 1,  
10 2002 pursuant to Ordinance No. HD-1871, adopted by the Board of  
11 Harbor Commissioners of the City of Long Beach at its meeting  
12 of September 30, 2002 by and between the **CITY OF LONG BEACH**,  
13 a municipal corporation, acting by and through its Board of  
14 Harbor Commissioners ("**City**") and **METROPOLITAN STEVEDORE COMPANY**,  
15 a California corporation ("**Assignee**").

16 **1. RECITALS:** This Second Amended and Restated  
17 Preferential Assignment Agreement ("**Agreement**") is made with  
18 reference to the following facts and objectives:

19 **1.1 Terminal Facilities.** City is the owner of  
20 certain marine terminal facilities at Pier G, Berths G212 to  
21 G215 inclusive, in the Harbor District of the City of Long  
22 Beach which include the wharves and adjacent wharf premises,  
23 shiploaders, conveyors, structures and appurtenant equipment  
24 for stockpiling and reclaiming bulk commodities ("**Terminal**  
25 "**Facilities**"), and has granted a preferential assignment of  
26 the Terminal Facilities to Assignee.

27 **1.2 Preferential Assignment.** On January 15, 1981  
28 City and Assignee entered into a Preferential Assignment  
Agreement for the use of the marine terminal facility

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 referred to in paragraph 1.1 (Harbor Department Document No.  
2 HD-3274 and Federal Maritime Commission Agreement No. 224-  
3 003939) which was amended on May 9, 1985 (Harbor Department  
4 Document No. HD-3964 and Federal Maritime Commission  
5 Agreement No. 224-003939-001); on January 8, 1987 (Harbor  
6 Department Document HD-4238 and Federal Maritime Commission  
7 Agreement No. 224-003939-002); and on August 27, 1987  
8 (Harbor Department Document No. HD-4328 and Federal Maritime  
9 Commission Agreement No. 224-003939-003).

10 **1.3 Amended and Restated Preferential Assignment**  
11 **Agreement.** As of March 12, 1992, the parties hereto entered  
12 into an Amended and Restated Preferential Assignment  
13 Agreement (Harbor Department Document No. HD-5000 and  
14 Federal Maritime Agreement No. 301-003939). On July 8,  
15 1993, June 4, 1994, October 2, 1994, January 2, 1997, and  
16 February 16, 2001, the parties amended the Amended and  
17 Restated Preferential Assignment Agreement.

18 **1.4 Further Amendment.** The parties desire to  
19 further amend the Amended and Restated Preferential  
20 Assignment Agreement.

21 **1.5 Entire Agreement.** The parties intend by this  
22 Second Amended and Restated Preferential Assignment  
23 Agreement to set forth all of their agreements and  
24 understandings and to entirely restate the terms and  
25 conditions of the Amended and Restated Preferential  
26 Assignment Agreement, as previously amended, see paragraph  
27 1.3, with the further amendments referred to in paragraph  
28 1.4 included herein.

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

1                   **1.6 The Premises.** City and Assignee have  
2 negotiated the terms and conditions of this Second Amended  
3 and Restated Preferential Assignment Agreement ("Agreement")  
4 for the use of the premises (as defined in paragraph 3).

5                   **2. TERM:** The term of this Agreement commenced on  
6 April 1, 1981 and shall end on March 31, 2016.

7                   **3. PREMISES:** City grants to Assignee and Assignee  
8 accepts the following assignments:

9                   **3.1 Wharf Assignment.** A nonexclusive preferential  
10 assignment of the wharf at Berths 212 to 215, inclusive, and  
11 the adjacent wharf premises together with shiploaders,  
12 conveyors, structures and appurtenant equipment for  
13 stockpiling and reclaiming bulk commodities, and the water  
14 area adjacent thereto required for berthing of vessels  
15 (Parcels I, II, III, IV, V on Harbor Department Drawing No.  
16 HD-3457 and Parcels VI, VII on Harbor Department Drawing No.  
17 HD 4-62 and Parcels IX, XA, XB, XC and XD on Harbor  
18 Department Drawing No. HD 4-92). On Parcel VI, Assignee has  
19 constructed an office/warehouse building commonly known as  
20 1045 Pier G Avenue that contains approximately 10,800 square  
21 feet and a mobile equipment building commonly known as 1043  
22 Pier G Avenue containing approximately 15,400 square feet  
23 (collectively "Maintenance Service Facility").

24                   **3.2 Maintenance Service Facility.** The Maintenance  
25 Service Facility shall be the property of Assignee during  
26 the term of the Agreement, including any renewal or  
27 extension term. Upon expiration or sooner termination of  
28 the Agreement, or any extension or renewal term, the

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

1 Maintenance Service Facility shall become the property of  
2 City. Assignee shall be solely responsible for the payment  
3 of and release of all liens, charges, or encumbrances of any  
4 nature whatsoever against the Maintenance Service Facility  
5 and shall transfer title thereto at no cost to City, upon  
6 acceptance of same by City.

7 **3.3 Maintenance Service Facility and Harbor**

8 **Department-owned Office Building.** An exclusive preferential  
9 assignment of the Maintenance Service Facility (located on  
10 Parcel VI) and of the Harbor Department-owned office  
11 building containing approximately 10,065 square feet  
12 (located on Parcel VII on Harbor Department Drawing No. HD  
13 4-62).

14 **3.4 Coal Shed.** An exclusive preferential

15 assignment of the coal shed constructed by City on Parcels  
16 XA, XB, XC and XD which parcels are shown on Harbor  
17 Department Drawing No. HD 4-92.

18 **3.5 Ingress/Egress.** A right of ingress and egress

19 to and from Assignee's truck dump over land area shown on  
20 Harbor Department Drawing No. HD 3-244.

21 **3.6 Drawings.** The premises assigned are shown on

22 Harbor Department Drawings Nos. HD-3457 (Rev. 8/16/91), HD  
23 4-62 (Rev. 3/11/99), HD 4-92 (Rev. 12/18/00), HD 3-244  
24 (Rev. 11/18/90), attached hereto and by this reference made  
25 a part hereof. However, and notwithstanding any other  
26 provisions of this Agreement, (i) the gear shed located on  
27 Parcel VI as shown on Drawing No. 4-62 has been demolished,  
28 and (ii) the Maintenance Service Facility has been

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

1 constructed on Parcel VI. A revised drawing of Drawing HD  
2 4-62 (Rev. 3/11/99) is being prepared to reflect the  
3 foregoing. Upon the preparation of the revised drawing, the  
4 parties will amend this Agreement to replace Drawing HD 4-62  
5 (Rev. 3/11/99) with the revised drawing.

6 **3.7 Reservation.** City reserves for itself, its  
7 grantees and assignees, and their successors in interest and  
8 assigns, the right of access over, through and across Parcel  
9 I of the premises to areas on Pier G southerly of and/or  
10 surrounded in part by Parcel I and located easterly of  
11 Berths 212 to 215, inclusive, which areas are not assigned  
12 to Assignee by this Agreement.

13 **3.8 Use of Parcels III and IV.** The use of Parcels  
14 III and IV of the premises is subject to non-exclusive  
15 rights granted to third parties to use said parcels, subject  
16 to Assignee's preferential use, for the construction,  
17 maintenance, operation, repair and renewal of conveyor  
18 transfer systems thereon (as more particularly described in  
19 Harbor Department Documents Nos. HD-1909 [Atlantic Richfield  
20 Company, HD-4638 [Applied Industrial Materials Corporation],  
21 HD-6282 [Applied Industrial Materials Corporation], and HD-  
22 6406 [Ultramar, Inc.], which documents, with amendments  
23 thereto (collectively referred to as "Harbor Department  
24 Documents"), are on file in the offices of the Harbor  
25 Department, and City reserves for itself, its grantees and  
26 assignees, and their successors in interest and assigns, the  
27 right of access to said Parcels III and IV in connection  
28 therewith.

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

1                   **3.9 Pedestrian Bridge.** Assignee is granted an  
2 exclusive air and surface easement to construct, maintain  
3 and use an overhead pedestrian bridge owned by City between  
4 Parcels VI and VII, including the right to use certain  
5 surface areas for bridge footings and supports, and Assignee  
6 agrees to maintain the overhead pedestrian bridge in good  
7 order, condition, repair and in compliance with all laws,  
8 rules, orders and regulations of governmental agencies  
9 having jurisdiction. The overhead pedestrian bridge, which  
10 has been constructed, shall be shown on the revised drawing  
11 of Drawing HD 4-62 (Rev. 3/11/99) discussed in paragraph 3.6  
12 above.

13                   **3.10 Boundary Lines.** City reserves the right to  
14 adjust the boundary lines by an enlargement or reduction in  
15 the sizes of various parcels. In such event, the attached  
16 Harbor Department Drawings shall be revised to reflect such  
17 boundary revisions, and the revised drawings shall be  
18 attached to this Agreement.

19                   **3.11 Mineral Rights.** There are excepted and  
20 reserved from the premises all minerals and mineral rights  
21 of every kind and character now known to exist or hereafter  
22 discovered, including without limiting the generality of the  
23 foregoing, oil, gas and water rights, together with the  
24 full, exclusive and perpetual rights to explore for, remove  
25 and dispose of said minerals, or any part thereof, from the  
26 premises without, however, the rights of surface entry upon  
27 the premises.

28                   **3.12 Restrictions.** This Agreement and all rights

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

1 granted to Assignee hereunder are subject to restrictions,  
2 reservations, conditions and encumbrances of record,  
3 including, without limitation, the following legislative  
4 grants, to wit: Chapter 676, Statutes of 1911; Chapter 102,  
5 Statutes of 1925; Chapter 158, Statutes of 1935; Chapter 29,  
6 Statutes of 1956, First Extraordinary Session; Chapter 138,  
7 Statutes of 1964, First Extraordinary Session; the Charter  
8 of the City of Long Beach; and the Federal navigational  
9 servitude.

10 **3.13 Inspection.** City's authorized representa-  
11 tives shall have access to the Premises at any and all  
12 reasonable times, for the purpose of determining whether or  
13 not Assignee is complying with the terms and conditions  
14 hereof, for fire and police purposes, for fire hazards and  
15 other hazards of a like kind or nature, to investigate any  
16 incidents involving personal injury or property damage, or  
17 for any other purposes incidental to the rights or duties of  
18 City. The right of inspection hereby reserved to City shall  
19 impose no obligation on City to make inspections to  
20 ascertain the condition of the Premises, and shall impose no  
21 liability upon City for failure to make such inspection.

22 **4. USE OF PREMISES:** The premises may be used by  
23 Assignee for the docking and mooring of vessels, the assembling,  
24 stockpiling, handling, loading and unloading of dry bulk  
25 commodities and other commodities and cargo into and from such  
26 vessels over, through and upon such premises and from and upon  
27 other vessels, barges and lighters provided Assignee shall notify  
28 City in writing before handling any commodity or cargo other than

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

1 dry bulk commodities at the premises. The right hereby granted  
2 to use said premises shall not be exclusive (except as to  
3 Maintenance Service Facility, office building and coal shed).

4           **4.1 Use.** The 150,000 metric ton capacity storage  
5 shed constructed by City on Parcels XA, XB, XC and XD of the  
6 Premises and sometimes referred to as the "coal shed" may be  
7 used by Assignee for either the storage and handling of coal  
8 or the storage and handling of petroleum coke; provided, if  
9 used by Assignee for petroleum coke, the shed shall be sub-  
10 assigned to one or more petroleum coke producers or  
11 marketers for storage of its or their product. City hereby  
12 expressly approves sub-assignments of one half of the shed  
13 to AIMCOR, Carbon Products Group, and one half of the shed  
14 to TOSCO, each for a period of ten (10) years commencing as  
15 of October 1, 2000. Any further or different sub-assignment  
16 shall be subject to the express written approval of City in  
17 its absolute discretion.

18           **4.2 Temporary Assignments.** Whenever the premises  
19 in which Assignee has a non-exclusive preferential  
20 assignment, or any part thereof, are not required, in whole  
21 or in part, for the uses permitted hereunder, the Executive  
22 Director of the Long Beach Harbor Department ("Executive  
23 Director") shall have the right to and may make temporary  
24 assignments to any other person, firm or corporation to use  
25 the premises, or any part thereof, as provided in Port of  
26 Long Beach Tariff No. 4, as the same now exists or hereafter  
27 may be amended or restated ("Tariff No. 4") and all tariff  
28 charges accruing in connection with such temporary

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

1 assignment shall be and remain the property of City.

2 **4.3 Equipment and Facilities.** The bulkloading  
3 equipment and facilities situated on the premises shall not  
4 be temporarily assigned for the handling of such commodities  
5 which, in the opinion of the Executive Director, are not  
6 suitable.

7 **4.4 Temporary Assignees.** The Executive Director  
8 shall require temporary assignees to comply with all  
9 applicable laws and regulations and to defend and to  
10 indemnify Assignee, the City of Long Beach, its Board of  
11 Harbor Commissioners (individually and collectively), and  
12 their officers and employees from all actions, suits,  
13 proceedings, claims and demands, loss, liens, costs, expense  
14 and liability, of any kind and nature whatsoever, for injury  
15 to or death of persons or damage to property, brought, made,  
16 filed against, imposed upon or sustained by Assignee, the  
17 City of Long Beach, its Board of Harbor Commissioners  
18 (individually and collectively) or their officers and  
19 employees, and arising from or attributable to or caused,  
20 directly or indirectly, through negligence or otherwise, by  
21 such temporary assignment and use or occupancy of the  
22 premises, or the machinery, equipment, structures and  
23 improvements located on the premises or from operations  
24 conducted thereon by such temporary assignees, their  
25 officers, agents or employees, or by any person or persons  
26 acting on their behalf.

27 **4.5 No Other Use.** The premises shall not be used  
28 for any other purposes without the prior written consent of



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

1 the Executive Director, and in no event, anything to the  
2 contrary notwithstanding, shall the premises be used for any  
3 purpose which shall interfere with commerce, navigation or  
4 fisheries, or be inconsistent with the trusts upon which the  
5 lands on which the premises are located are now or may  
6 hereafter be held by the City of Long Beach.

7 **4.6 Operator/Stevedore.** Assignee's function as  
8 operator of the bulkloading facility is to receive the bulk  
9 commodities as they are delivered to the premises by truck,  
10 rail or otherwise, to stockpile them and/or to deliver them  
11 to the end of the spout over the vessel to be loaded, and  
12 that the bulkloading facility has completed delivery when  
13 the commodities flow out of the spout. All functions in  
14 receiving and stowing the bulk commodities aboard the  
15 vessel, including the trimming of the cargo by use of  
16 mechanical trimmers or by the spout, are those of the  
17 stevedore. Assignee, as operator of the bulkloading  
18 facility, shall perform no function on the vessels. It is  
19 recognized that Assignee is also engaged in the business of  
20 a stevedore at the Port of Long Beach, and that Assignee  
21 may, in its capacity as stevedore and not in its capacity as  
22 operator of the bulkloading facility, be requested to, and  
23 will, perform stevedoring functions in connection with the  
24 loading of bulk commodities aboard vessels. However, it is  
25 further understood and agreed that Assignee shall not have  
26 the exclusive right to perform stevedoring services upon the  
27 premises or upon vessels berthed at Berths 212 to 215,  
28 inclusive, and that any responsible person, firm or

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

1 corporation may come upon the premises for the purpose of  
2 performing stevedoring operations when requested to do so by  
3 any steamship operator, master, agent, charterer or by any  
4 person legally responsible for the loading or unloading of a  
5 vessel berthed at Berths 212 to 215, inclusive.

6 **4.7 Use of Conveyor Systems and Wharves.** In  
7 addition to the rights granted to third parties to use  
8 Parcels III and IV of the premises (as recited in paragraph  
9 3.8), City has also granted to said third parties by the  
10 Harbor Department Documents certain rights to use City's  
11 conveyor system and the wharves at Berths 212 to 215,  
12 inclusive, (subject to Assignee's preferential rights  
13 granted by City) for the conveyance of the bulk commodities  
14 of said third parties from their leased premises to the bulk  
15 commodity conveyor and loading system on the premises, in  
16 accordance with the covenants, conditions and agreements  
17 contained in the Harbor Department Documents. The Harbor  
18 Department Documents also provide that said third parties  
19 may exercise their rights granted by City by contracting  
20 with Assignee herein or with independent stevedoring  
21 contractors and terminal operators who may request  
22 assignments of City's conveyor system from City, for the  
23 movement of bulk commodities from their leased premises as  
24 to wharf for loading aboard vessels.

25 **5. TARIFF CHARGES - BOOKS AND RECORDS:** Assignee shall  
26 pay, or cause to be paid, to City as rent for the use of the  
27 premises all tariff charges accruing under Tariff No. 4 in  
28 connection with the use of the premises hereunder by Assignee as

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

1 well as land rent for Parcels IX, XA, XB, XC, and XD (as shown on  
2 Harbor Department Drawing No. HD 4-92).

3           **5.1 Statement Following Departure.** On or before  
4 the tenth (10th) day following the departures of each vessel  
5 docking at Berths 212 to 215, inclusive, Assignee shall file  
6 with the Executive Director, on forms approved by City, a  
7 statement verified by the oath of Assignee's manager or  
8 other duly authorized representative, showing all wharfage  
9 and other applicable charges which shall have been assessed  
10 in accordance with the provisions of Tariff No. 4 with  
11 respect to each such vessel. Within forty-five (45) days  
12 (or such other period of time as may be prescribed in Tariff  
13 No. 4, Item 714[c]) after the departure of a vessel docking  
14 at Berths 212 to 215 inclusive, Assignee shall pay City all  
15 such wharfage and other applicable tariff charges.

16           **5.2 Monthly Statement.** On or before the tenth  
17 (10th) day of each month, Assignee shall file with the  
18 Executive Director, on forms approved by City, a statement  
19 verified by the oath of Assignee's manager or other duly  
20 authorized representative, showing all wharfage charges  
21 which shall have been assessed where the departure of such a  
22 vessel is not involved and for all wharf demurrage, storage  
23 and other charges, if any, during the preceding calendar  
24 month. Assignee shall pay to City all such tariff charges  
25 at the same time payments under paragraph 5.1 are made.

26           **5.3 Alameda Corridor Reports.** Assignee agrees to  
27 provide City, the Alameda Corridor Transportation Authority  
28 ("ACTA"), or their agents, any information reasonably

1 required to compile accurate statistical information  
2 relating to the Alameda Corridor, and to enable ACTA to  
3 generate timely and accurate invoices for Alameda Corridor  
4 use fees and container charges payable by the railroads.  
5 Assignee shall use its best efforts to provide such  
6 information in the format requested.

7 **5.4 Accident Reports.** Assignee shall report in  
8 writing to the Executive Director within fifteen (15) days  
9 from any accident or occurrence involving death of or injury  
10 to any person or persons or damage to property in excess of  
11 \$10,000, occurring on the Premises or within the Harbor  
12 District if Assignee's officers, agents or employees are  
13 involved in such an accident or occurrence.

14 **5.5 Additional Reports.** Assignee shall furnish  
15 such additional reports relating to its use of the premises  
16 as may be requested by the Executive Director. Assignee  
17 shall keep full and accurate records relating to its  
18 operations on the premises, and the records shall be subject  
19 to inspection and audit by representatives of City at any  
20 and all reasonable times during normal business hours, and  
21 copies may be made of any and all such records. Said  
22 records shall be kept at Assignee's principal place of  
23 business in the City of Los Angeles or at Assignee's office  
24 on Pier G, Port of Long Beach.

25 **5.6 Financial Statements.** Within ninety (90) days  
26 after the end of Assignee's fiscal year, Assignee shall  
27 prepare and deliver or cause to be prepared and delivered to  
28 City a complete annual financial statement prepared in

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

1 accordance with generally accepted accounting principles  
2 containing a statement of income and retained earnings and a  
3 balance sheet statement for all of its operations which  
4 statement shall be certified by an independent certified  
5 public accountant.

6 **5.7 Stockpiled Commodities.** For any bulk  
7 commodities stockpiled by Assignee on the premises and which  
8 may thereafter be removed without passing over the wharf at  
9 Berths 212 to 215, inclusive, Assignee shall pay to City a  
10 sum equal to the wharfage charges applicable thereto as  
11 prescribed by Tariff No. 4, as if the bulk commodity had  
12 passed over the wharf.

13 **5.8 Invoice.** As an accommodation and without  
14 relieving Assignee of its obligation to pay all tariff  
15 charges, City agrees to invoice each vessel, its owners,  
16 charterers or agents for tariff charges other than wharfage  
17 and equipment rental (as provided in paragraph 6) and to  
18 accept payment from the vessel, its owners, charterers or  
19 agents. In the event City shall be unable to affect  
20 collection of tariff charges invoiced to the vessel, its  
21 owners, charterers or agents within forty-five (45) days  
22 after the date of City's invoice, Assignee shall pay to the  
23 City within fifteen (15) days after demand the amount of the  
24 tariff charges so invoiced without interest or late charges;  
25 provided, however, if Assignee shall fail or refuse to pay  
26 upon demand the amount of tariff charges so invoiced, the  
27 invoice shall be deemed delinquent and shall bear interest  
28 as provided in paragraph 5.10.

1                                   **5.9 Land Rent for Parcels IX, XA, XB, XC and XD.**

2           Subject to the provisions of subparagraphs 5.9.1 and 8.1,  
3           Assignee shall pay to City, as additional rental for the use  
4           of Parcels IX, XA, XB, XC and XD (as shown on Harbor  
5           Department Drawing No. HD 4-92), without deduction, setoff,  
6           prior notice or demand, the sum of Three Hundred Sixty-six  
7           Thousand One Hundred Ten Dollars (\$366,110.00) per year  
8           (calculated at 236,200 square feet times \$1.55). Commencing  
9           April 1, 2001 and subject to the provisions of subparagraphs  
10          5.9.1 and 8.1, one-half of this annual rental (One Hundred  
11          Eighty-three Thousand Fifty-five Dollars [\$183,055.00])  
12          shall be payable in advance semiannually on the first day of  
13          each six month period.

14                                5.9.1   The annual rental shall be adjusted on  
15                                April 1 of each year during the term ("adjustment  
16                                date"). The phrase "lease year" shall mean that twelve  
17                                (12) consecutive calendar month period commencing April  
18                                1 and ending March 31 of the next succeeding year.  
19                                Said adjustment shall be made by comparing the Consumer  
20                                Price Index for All Urban Consumers (base year 1982-  
21                                84=100) for Los Angeles-Anaheim-Riverside, published by  
22                                the United States Department of Labor, Bureau of Labor  
23                                Statistics ("Index"), which is published for the date  
24                                nearest the adjustment date ("Current Index"), with the  
25                                Index published nearest April 1, 2001 ("Beginning  
26                                Index"). If the Current Index has increased over the  
27                                Beginning Index, the annual rental for the then-current  
28                                lease year shall be set by multiplying the annual

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 rental set forth above by a fraction, the numerator of  
2 which is the Current Index and the denominator of which  
3 is the Beginning Index; provided, in no event shall the  
4 annual rental be less than the annual rental for the  
5 previous lease year. If the Index is discontinued or  
6 revised during the term, such other government Index or  
7 computation shall be used in order to obtain  
8 substantially the same result as if the Index had not  
9 been discontinued. On adjustment of the rent as  
10 provided herein, the parties shall immediately execute  
11 a writing setting forth the adjusted rent and when said  
12 writing is executed by the Executive Director, it shall  
13 constitute a legally binding agreement of the parties  
14 without further municipal, corporate or other action.

15 **5.10 Delinquent Payments.** All delinquent payments  
16 of tariff charges or other payments due City pursuant to  
17 this Agreement (whether invoiced by the City to Assignee or  
18 to a vessel, its owner, charterers or agents) shall bear  
19 interest at the rate prescribed in Tariff No. 4. All  
20 invoices issued by City are due and payable upon  
21 presentation, and any such invoices remaining unpaid the  
22 forty-fifth day after the date of issue shall be considered  
23 delinquent. Notwithstanding the foregoing, rental payments  
24 are delinquent if remaining unpaid on the tenth calendar day  
25 of the month for which due.

26 **6. EQUIPMENT RENTAL CHARGE:** In addition to the  
27 charges to be paid under paragraph 5 and in consideration of the  
28 granting of this preferential assignment of the premises and

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

1 bulkloading facilities located thereon, Assignee shall pay to  
2 City an equipment rental charge in the amount prescribed in Item  
3 515 of Tariff No. 4 for all merchandise in bulk handled by the  
4 bulkloading facilities by Assignee during the preceding calendar  
5 month. Merchandise in bulk shall be deemed "handled" only where  
6 (1) it is loaded aboard a vessel or (2) having been received at  
7 or by the bulkloading facilities, it is removed from the premises  
8 other than by loading aboard a vessel, with the use of said  
9 bulkloading equipment and facilities. Said equipment rental  
10 charge shall be paid to City at the same time Assignee's payments  
11 under paragraph 5.1 are made.

12           **7. MINIMUM ANNUAL TARIFF PAYMENTS:** The parties agree  
13 that the minimum annual tariff charges to be paid by Assignee  
14 pursuant to the provisions of paragraphs 5 and 6 above ("Minimum  
15 Annual Tariff Payments") shall be Five Million Seven Hundred  
16 Thousand Dollars (\$5,700,000.00). Land rent for Parcels IX, XA,  
17 XB, XC, and XD is not included in such payments, but rather is in  
18 addition thereto. In the event Assignee fails to pay tariff  
19 charges pursuant to the provisions of paragraphs 5 and 6 above  
20 equal to or greater than the Minimum Annual Tariff Payments  
21 during any one (1) year segment of the term ("underpayment"),  
22 Assignee shall pay to City within thirty (30) days after the end  
23 of each such one (1) year segment in which the Minimum Annual  
24 Tariff Payment is not attained the dollar equivalent to the  
25 underpayment ("Make-up Payment").

26           **8. TARIFF GUARANTEE, LAND RENTAL, AND COMPENSATION**  
27 **RENEGOTIATIONS:** The parties agree that the minimum tariff  
28 charges to be paid by Assignee pursuant to the provisions of



1 paragraphs 5, 6, and 7 during the five (5) year portion of the  
2 term commencing April 1, 2001 and ending March 31, 2006 shall be  
3 the dollar value equivalent of twenty-two million two hundred  
4 fifty thousand (22,250,000) metric tons ("Guaranteed Minimum  
5 Tonnage"). Land rent for Parcels IX, XA, XB, XC, and XD is not  
6 included in such payments, but rather is in addition thereto.

7 **8.1 Calculations for Guaranteed Minimum Tonnage**

8 **Dollar Equivalent.** The dollar value equivalent of the  
9 Guaranteed Minimum Tonnage ("Guaranteed Minimum Tonnage  
10 Dollar Equivalent") shall be calculated as follows:

11 The first fifteen million (15,000,000) metric  
12 tons of the Guaranteed Minimum Tonnage shall be  
13 multiplied by the total of the wharfage charge set  
14 forth in Item 356 of Tariff No. 4 and the equipment  
15 rental charge set forth in Item 515 of Tariff No. 4  
16 (the "First Component"). Guaranteed Minimum Tonnage in  
17 excess of the first fifteen million (15,000,000) metric  
18 tons shall be multiplied by the wharfage rate set forth  
19 in Item 364 of Tariff No. 4 (the "Second Component").  
20 Notwithstanding anything to the contrary appearing  
21 herein, in calculating the Guaranteed Minimum Tonnage  
22 Dollar Equivalent for any five (5) year segment of the  
23 term, the wharfage rate for Item 364 shall be ninety  
24 cents (\$0.90) per metric ton. The sum of the First  
25 Component and the Second Component shall constitute the  
26 Guaranteed Minimum Tonnage Dollar Equivalent.

27 In the event the wharfage charges set forth in  
28 Item 356 of Tariff No. 4 or the equipment rental charge

1 set forth in Item 515 of Tariff No. 4 are changed  
2 during a five (5) year segment of the term, the First  
3 Component shall be adjusted as follows: (i) multiply  
4 each applicable wharfage charge and equipment rental  
5 charge by the number of days each such charge is in  
6 effect during the five (5) year segment in question;  
7 (ii) add the results of said multiplications; and (iii)  
8 divide by 1825. The result of this calculation shall  
9 then be multiplied by fifteen million (15,000,000)  
10 metric tons.

11 **8.2 Refund of Make-up Payments.** In the event that  
12 during any five (5) year segment of the term the tariff  
13 charges paid by Assignee pursuant to the provisions of  
14 paragraphs 5, 6, and 7 ("Tariff Payments") are greater than  
15 the Guaranteed Minimum Tonnage Dollar Equivalent, certain  
16 Make-up Payments, if any such payments were made, shall be  
17 returned to Assignee within thirty (30) days of Assignee's  
18 final payment for such five (5) year segment pursuant to the  
19 following formula: for each five (5) year segment of the  
20 term the lesser of (a) Tariff Payments minus Guaranteed  
21 Minimum Tonnage Dollar Equivalent; or (b) Make-up Payments  
22 made by Assignee. Rent for Parcels IX, XA, XB, XC, and XD  
23 is not included in Tariff Payments but rather is in addition  
24 thereto.

25 **8.3 Adjustments.** For the balance of the term, the  
26 Guaranteed Minimum Tonnage Dollar Equivalents, Minimum  
27 Annual Tariff Payments, and land rent for Parcels IX, XA,  
28 XB, XC and XD shall be renegotiated and adjusted with an

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

1 effective date for each such adjustment of April 1, 2006,  
2 and April 1, 2011. If the parties are unable to agree on  
3 the Guaranteed Minimum Tonnage Dollar Equivalents, Minimum  
4 Annual Tariff Payments, and/or the land rental for Parcels  
5 IX, XA, XB, XC and XD, the amount thereof shall be  
6 determined by arbitration in accordance with the provisions  
7 of paragraph 12.

8 **8.4 Shipping From Any Other Facility.** The tonnage  
9 of all dry bulk commodities stored on Pier G but shipped by  
10 Assignee or anyone else from any other facility within the  
11 Port of Long Beach shall be deemed tonnage handled at or  
12 through the premises for the purpose of determining whether  
13 Assignee has met its Guaranteed Minimum Tonnage Dollar  
14 Equivalent requirement.

15 **8.5 Shortfall.** In the event Assignee fails to pay  
16 to City Tariff Payments in an amount equal to or greater  
17 than the Guaranteed Minimum Tonnage Dollar Equivalent for  
18 tonnage handled at or through the premises during any five  
19 (5) year segment of the term, Assignee shall pay to City  
20 within thirty (30) days after the end of such five (5) year  
21 segment an amount equal to the Guaranteed Minimum Tonnage  
22 Dollar Equivalent minus Tariff Charges previously paid by  
23 Assignee ("Shortfall"). For the purposes of this paragraph  
24 8.5, the remaining years of the term shall be divided into  
25 five (5) year segments commencing on April 1, 2006 and April  
26 1, 2011.

27 **8.6 Damage, Seizure or Prohibition.** If the  
28 premises, including the bulkloading machinery, equipment,

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

1 structures and improvements located thereon, are damaged by  
2 fire, flood, earthquake, explosion, the public enemy, or  
3 acts of God, or are seized or the operation thereof abated  
4 by governmental authority so as to render the premises or  
5 facility wholly or partially untenable or unfit for use,  
6 or so as to make it impracticable for Assignee to make  
7 reasonable use of the premises or to load vessels, or in the  
8 event that the shipment of bulk commodities, normally  
9 handled at the premises shall be prohibited by law or other  
10 governmental regulation, or should the production and/or  
11 marketing of petroleum coke, coal or other bulk commodities  
12 be substantially reduced by reason of world-wide economic  
13 conditions beyond the control of Assignee and its customers  
14 for whom it handles the movement and loading of such  
15 products, then there shall be a proportionate reduction in  
16 the Guaranteed Minimum Tonnage according to the nature and  
17 extent of the damage sustained or the reduction in tonnages  
18 handled at the premises by reason thereof by mutual  
19 agreement of the parties.

20 **8.7 Labor Disturbance.** If, by reason of strikes  
21 or other labor disputes, lockouts, or other work stoppages,  
22 Assignee is unable to use the assigned premises for the uses  
23 permitted hereunder, then there shall be a proportionate  
24 reduction of the Guaranteed Minimum Tonnage commencing the  
25 thirty-first day after receipt by City of notice of such  
26 labor disturbance, by the percentage the number of days of  
27 such labor disturbance (commencing with the thirty-second  
28 day of said labor disturbance until such labor disturbance

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

1 ceases) bears to the entire term of this Agreement. Should  
2 a labor disturbance commence after Assignee has shipped the  
3 Guaranteed Minimum Tonnage, there shall be no reduction in  
4 said Guaranteed Minimum Tonnage by reason of such labor  
5 disturbance.

6 **9. MAINTENANCE AND REPAIR:** Except as provided in  
7 paragraphs 9.2 and 9.6, Assignee, at its cost, shall keep and  
8 maintain the premises and all bulkloading machinery, equipment,  
9 structures and improvements located thereon (but excluding the  
10 water area, the wharf structure, fender systems, conveyor  
11 terminals and pits) in good and substantial repair and operating  
12 condition and shall make all necessary repairs thereto and shall  
13 replace all worn or unfit parts and equipment with parts and  
14 equipment of a standard quality not less than the original  
15 equipment as of the commencement of the term of this Agreement.  
16 Assignee's obligation of maintenance and repair shall include all  
17 machinery and equipment located in the conveyor tunnels and pits.  
18 Without limiting the foregoing, Assignee shall comply with the  
19 Maintenance Standards Guidelines set forth in Exhibit "A".  
20 Exhibit "A" is incorporated herein by this reference. Nothing in  
21 Exhibit "A" shall create any obligation by the City to Assignee  
22 or anyone else. Any monitoring or lack thereof by City shall not  
23 relieve Assignee of its duty to fully comply with this Agreement,  
24 as amended from time to time, and any and all applicable laws.  
25 In the event of any inconsistency between the text of this  
26 Agreement and Exhibit "A," the text of this Agreement shall  
27 control.

28 **9.1 Maintenance Plans and Budget:** On or before

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

1           October 15th of each year, Assignee shall prepare and  
2           submit to City a proposed annual maintenance plan and budget  
3           for the period January 1st through December 31st. Such  
4           proposed plan and budget shall (i) be based on specified  
5           levels of labor costs and fringe benefits, material and  
6           equipment costs, purchased services and other out-of-pocket  
7           costs; and (ii) specify the assumptions used in developing  
8           such plan and budget. Within thirty (30) days of City's  
9           receipt of such proposed annual maintenance plan and budget,  
10          the Executive Director of the City or his or her designee  
11          shall approve, conditionally approve, or disapprove such  
12          plan and budget. City's review, approval, conditional  
13          approval and/or disapproval of such proposed plan and budget  
14          shall be based solely on the benefit or detriment to City.  
15          City shall not be responsible for reviewing any plan or  
16          budget for safety or conformance with laws. Further, such  
17          review, approval, conditional approval, and/or disapproval  
18          by City shall not alter Assignee's duty to comply with each  
19          and every provision of this Agreement, as amended from time  
20          to time, and all applicable laws. If City disapproves any  
21          proposed plan and budget, Assignee shall submit a corrected  
22          plan and budget within fifteen (15) days of such disap-  
23          proval. Assignee shall timely implement each approved or  
24          conditionally approved annual maintenance plan and budget.

25                 **9.2 No Duty to Repair:** There shall be no duty to  
26                 repair damage to the premises, equipment and facilities  
27                 caused by fire, flood, earthquake, explosion, the public  
28                 enemy, acts of God, subsidence, or by acts or neglect of

1 City, its officers and employees, or by the acts, conducts  
2 or omission of third persons lawfully upon the premises  
3 pursuant to express authorization granted by the Executive  
4 Director.

5 **9.3 Rail Trackage.** Assignee shall maintain and  
6 repair the railroad trackage upon the premises.

7 **9.4 Negligence.** Except as herein provided,  
8 Assignee shall be liable for and shall pay, or cause to be  
9 paid to City, upon demand, the actual cost of all damages or  
10 repairs to property owned by City, caused negligently or  
11 intentionally, by Assignee, its officers, agents, employees,  
12 licensees, invitees, or permittees, or by vessels for which  
13 it furnishes services at Berths 212 to 215, inclusive,  
14 pursuant to this Agreement.

15 **9.5 Failure to Perform.** In the event Assignee  
16 fails to perform such maintenance, repair and  
17 rehabilitation, as herein provided, City within twenty-four  
18 (24) hours after written notice to Assignee may undertake  
19 such maintenance, repair and rehabilitation at the expense  
20 of Assignee, as provided herein. Assignee shall promptly  
21 reimburse City for City's costs upon receipt of an itemized  
22 statement.

23 **9.6 Piers, Wharves, and Bulkheads.** City, at its  
24 cost, shall be responsible for maintaining the pier, wharves  
25 and bulkheads, and the fender system on the premises, and  
26 shall make all necessary repairs thereto, including any and  
27 all repairs occasioned by reasonable wear and tear and  
28 action of the elements except where damage is caused by the

1 negligent or intentional acts, whether such acts be acts of  
2 commission or omission, of Assignee, its officers, agents or  
3 employees or of vessels for which Assignee furnished  
4 services at Berths 212 to 215 inclusive pursuant to this  
5 Agreement, in which case City may make all necessary  
6 repairs, and Assignee shall reimburse City for the cost  
7 thereof. Except for replacements due to reasonable wear and  
8 tear and action of the elements, any required replacement of  
9 sound wharf piling or elements of the fender system arising  
10 from operations involving vessels calling at Berths 212 to  
11 215 inclusive will be presumed to have resulted from or be  
12 caused by the negligent or improper handling or berthing of  
13 such vessels.

14 **9.7 Compliance.** Assignee shall at all times keep  
15 and maintain the premises, machinery, equipment, structures  
16 and improvements in a safe, clean, wholesome, sanitary and  
17 sightly condition under all applicable federal, state,  
18 municipal and other laws, ordinances, rules and regulations  
19 and to the satisfaction of the Executive Director to the  
20 extent that from time to time the necessity for any such  
21 keeping or maintenance, directly or indirectly, is caused by  
22 or arises out of any act, omission, or neglect of, or any  
23 use or occupancy of, said premises by Assignee, its  
24 officers, agents, employees, licensees, permittees, or  
25 invitees.

26 **9.8 Waiver.** Assignee waives the right to make  
27 repairs at the expense of the City and waives the benefits  
28 of the provisions of Section 1941 and 1942 of the California



1 Civil Code relating thereto.

2 **9.9 Housekeeping.** Assignee agrees to provide  
3 proper containers for trash, and to keep the premises,  
4 including the water area, free and clear of rubbish, debris  
5 and litter at all times, including debris from vessels and  
6 cargo loading and unloading operations. No offensive or  
7 refuse matter, nor any substance constituting any  
8 unnecessary, unreasonable or unlawful fire hazard, nor  
9 material detrimental to the public health shall ever be  
10 permitted to be or remain on the premises and Assignee shall  
11 exercise reasonable care to prevent such material or matter  
12 from being or accumulating upon the premises. Unless caused  
13 by the negligent or intentional acts or omissions of  
14 Assignee, its officers, agents, servants or employees, or  
15 assignees or third parties acting with the consent of  
16 Assignee, Assignee shall not be liable to City for any loss,  
17 liability or damages sustained by City, arising out of or  
18 connected with the presence on the premises of offensive or  
19 refuse matters, substances constituting or consisting of  
20 unnecessary, unreasonable or unlawful fire hazards, or  
21 materials detrimental to the public health.

22 **10. IMPROVEMENTS:** In order to comply with recently  
23 enacted legislation and new rules of regulatory agencies, City  
24 and Assignee have agreed to design and construct certain  
25 modifications and improvements to the Terminal Facilities upon  
26 the following terms and conditions.

27 **10.1 Modifications/Improvements.** Subject to  
28 further approvals by the Board of Harbor Commissioners of

1 each specific modification and improvement listed in Exhibit  
2 "B", City, at its cost, shall design and construct the  
3 modifications and improvements described in Exhibit "B".  
4 Exhibit "B" is incorporated herein by this reference.

5 **10.2 Costs of Improvements.** The actual total  
6 amount expended by City pursuant to paragraph 10.1 shall be  
7 added to and be deemed part of the total cost of  
8 improvements to the Terminal Facility and shall be used to  
9 determine the Guaranteed Minimum Tonnage as provided in  
10 paragraph 8.1.

11 **11. PROPERTY AND CARGO UNDER ASSIGNEE'S CONTROL:** City  
12 assumes no responsibility or liability for loss or damage to the  
13 property of Assignee or property under the care, custody or  
14 control of Assignee, whether caused by fire or other causes, nor  
15 does it assume any responsibility whatsoever for any shortages of  
16 cargo handled by Assignee at the premises. Assignee hereby  
17 waives all claims against City with respect to such property,  
18 provided, however, that Assignee does not waive claim for injury,  
19 loss or damage to property or to any person on the premises in  
20 case such injury or damage is caused by the sole negligence of  
21 City, or of any person for whose conduct City is responsible.

22 **12. ARBITRATION:** The parties hereto agree to  
23 renegotiate the Guaranteed Minimum Tonnage at least sixty (60)  
24 days prior to the adjustment dates provided in paragraph 8.1.  
25 The renegotiated figures shall be determined by the parties  
26 according to the criteria set forth in paragraph 12.1. If the  
27 parties cannot agree upon the Guaranteed Minimum Tonnage by such  
28 date, the matter shall be determined by arbitration in accordance

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

1 with the provisions of paragraph 12.2.

2           **12.1 Negotiation Criteria.** In the negotiations to  
3 establish the Guaranteed Minimum Tonnage and/or the land  
4 rental for Parcels IX, XA, XB, XC and XD, the parties shall  
5 take into consideration the character of the premises, their  
6 value, the fair rental value of similar premises and  
7 facilities devoted to similar use, the terms, conditions and  
8 restrictions of this Agreement, the tonnage handled at the  
9 premises, the return to the City, and any other facts and  
10 data necessary for the proper determination of such figures.  
11 However, in no event shall the annual land rental for  
12 Parcels IX, XA, XB, XC and XD be less than the annual land  
13 rental for the previous lease year, as adjusted upward by  
14 the provisions of paragraph 5.9.1.

15           **12.2 Arbitration Procedures.** Whenever arbitration  
16 hereunder is necessary, the party desiring arbitration shall  
17 select an arbitrator and give written notice to the other  
18 party, who shall select an arbitrator within ten (10)  
19 business days after receipt of such notice. If the other  
20 party fails to name such second arbitrator within said ten  
21 (10) business days, the arbitrator named by the first party  
22 shall decide the matter. The two arbitrators chosen shall,  
23 within ten (10) business days after the appointment of the  
24 second, select a third. If the two cannot agree upon a  
25 third, he shall be appointed by any judge of the Superior  
26 Court of the County of Los Angeles, California, upon  
27 application made therefor by either party, upon ten (10)  
28 days' written notice to the other. Upon their appointment,

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

1 the three arbitrators shall enter immediately upon the  
2 discharge of their duties and must determine the amount of  
3 Guaranteed Minimum Tonnage and/or the land rental for  
4 Parcels IX, XA, XB, XC and XD. Such arbitration proceedings  
5 shall be in accordance with the provisions of Title 9  
6 (Arbitration) of Part 3 of the California Code of Civil  
7 Procedure. Each party shall pay the fees and expenses of  
8 its appointed arbitrator and one-half ( $\frac{1}{2}$ ) of the fees and  
9 expenses of the third arbitrator.

10 **13. TACKLE AND LABOR:** Assignee, at its cost, shall  
11 provide all tackle, gear and labor for the docking or mooring of  
12 vessels at the premises and shall provide, at its own cost and  
13 expense, such appliances and employ such persons as it may  
14 require for the handling of goods, wares, merchandise, and  
15 passengers thereat. Assignee shall furnish and be responsible  
16 for, the telescoping chutes, trimmers and related gear on the  
17 boom of the ship bulkloader. Assignee agrees to make such gear  
18 available to third parties to whom City may temporarily assign  
19 the ship bulkloader and premises pursuant to the provisions of  
20 paragraph 4.2 herein, at reasonable rental rates and other terms,  
21 subject to the approval of the Executive Director.

22 **14. ACCESS TO PREMISES:** City shall provide vehicular  
23 and rail access to the premises from the Harbor Department street  
24 and railroad trackage system. City's authorized representatives  
25 shall have access to the premises at all times for inspection,  
26 repair, fire and police purposes.

27 **15. RIGHTS OF WAY:** This Agreement is subject to rights  
28 of way and entry upon the premises for the installation,

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

1 relocation, removal, operation and maintenance of sewers,  
2 pipelines, conduits and telephone, telegraph, light, heat or  
3 power lines, whether underground or overhead, as may from time to  
4 time be determined by the Board of Harbor Commissioners, as  
5 provided in Section 1207(g) of the Charter of the City of Long  
6 Beach. Said activities shall be so conducted and said rights of  
7 way shall be so located that a minimum of interference with  
8 Assignee's use of the premises is encountered. City also  
9 reserves the right to make such changes, additions and  
10 alterations to the bulkloading machinery and equipment as it  
11 deems necessary to accommodate the movement of merchandise in  
12 bulk through the Port of Long Beach.

13           **16. INDEMNIFICATION:** Assignee shall defend and  
14 indemnify the City of Long Beach, its Board of Harbor  
15 Commissioners (individually and collectively) and their officers  
16 and employees ("indemnified parties") from and against any and  
17 all actions, suits, proceedings, claims and demands, loss, liens,  
18 costs, expense and liability, of any kind and nature whatsoever,  
19 for injury to or death of persons, or damage to property,  
20 including property owned by the City of Long Beach, brought,  
21 made, filed against, imposed upon or sustained by an indemnified  
22 parties or any of them and arising from or attributable to or  
23 caused, directly or indirectly, through negligence or otherwise,  
24 by the use or occupancy of the premises, or the machinery,  
25 equipment, structures and improvements located thereon, or from  
26 operations conducted thereon, by Assignee, its officers, agents  
27 or employees, or by any person or persons acting on behalf of  
28 Assignee and with the knowledge and consent, express or implied,

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

1 of Assignee pursuant to this Agreement, by Assignee's failure or  
2 refusal to comply with the Environmental Standards or the  
3 Environmental Compliance Program, or by reason of injury to or  
4 death of employees of Assignee or others where liability arises  
5 out of provisions of Section 6300, et seq. of the California  
6 Labor Code or similar acts or statutes pertaining to the safety  
7 of premises or of equipment.

8           **17. LIABILITY INSURANCE:** As a condition precedent to  
9 the effectiveness of this Agreement, and in partial performance  
10 of Assignee's obligations under paragraph 16 herein, Assignee  
11 shall procure and maintain in full force and effect, while this  
12 Agreement shall remain in effect, a policy or policies of  
13 commercial general liability insurance from a company or  
14 companies authorized to do business in the State of California,  
15 with minimum limits of:

16                     \$5,000,000 combined single limit for death, personal  
17                     injury, bodily injury or loss sustained by any one  
18                     person or more than one person in any one occurrence,  
19                     and for damage to or loss of property sustained in any  
20                     one occurrence; and

21                     \$2,000,000 for damage to or loss of property of the  
22                     City, caused by fire and explosion (Fire Legal  
23                     Liability).

24           **17.1 Provisions.** The policy or policies shall  
25 provide as follows:

26                     17.1.1 That the City of Long Beach, the Board  
27                     of Harbor Commissioners, and their officers and  
28                     employees, while acting within the scope of their  
                      authority, shall be additional insureds, such insurance  
                      to be primary and not contributing with any other  
                      insurance maintained by the foregoing, but only as

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

1 related to Assignee's actual operations for its own  
2 account under this Agreement and not when the premises  
3 or facilities are being used or operated by any other  
4 person or entity pursuant to secondary or temporary  
5 assignment by the Executive Director, as provided in  
6 paragraph 4.

7 17.1.2 That in the event of one insured  
8 (whether named or additional) incurring liability to  
9 any other insured (whether named or additional), the  
10 policy shall cover the insured against whom claim is or  
11 may be made in the same manner as if separate policies  
12 had been issued to each insured.

13 17.1.3 That said policy or policies shall  
14 either contain a blanket form of contractual liability  
15 coverage, including contracts and agreements, or there  
16 shall be attached to said policy or policies an  
17 endorsement providing that such insurance as is  
18 provided for therein shall apply to the obligations  
19 assumed by Assignee under paragraph 16 of this  
20 Agreement.

21 17.1.4 That the same shall not be cancelled  
22 or reduced until thirty-day written notice of such  
23 cancellation or reduction has been served upon the  
24 Executive Director by registered or certified mail.

25 **17.2 Premiums/Deductibles.** The City of Long Beach,  
26 the Board of Harbor Commissioners (individually and  
27 collectively), and their officers and employees shall not be  
28 liable for the payment of any premiums or assessments on

1 said policy or policies, and Assignee agrees to indemnify  
2 said City, Board, and their officers and employees  
3 therefrom. Such insurance may provide for such deductibles  
4 or self-insured retention as shall be acceptable to the  
5 Executive Director.

6 **17.3 Evidence of Insurance.** Assignee shall deliver  
7 certified copies of the policy or policies or an endorsement  
8 on forms approved by City ("evidence of insurance") to the  
9 Executive Director for approval as to sufficiency and to the  
10 City Attorney for approval as to form.

11 **17.4 Timing.** At least fifteen (15) days prior to  
12 the expiration of any such policy, Assignee shall furnish  
13 City with evidence of insurance demonstrating that such  
14 insurance requirements will continue to be met. If such  
15 coverage is canceled or reduced, Assignee shall, within ten  
16 (10) days after receipt of notice of such cancellation or  
17 reduction, comply with said insurance requirements.  
18 Assignee agrees to suspend and cease all operations  
19 hereunder on the premises during such periods of time as the  
20 required insurance coverage is not in effect and the  
21 evidence of insurance has not been furnished as provided in  
22 paragraphs 17.3 and 17.4.

23 **17.5 Not Limitation.** The procuring of such policy  
24 or policies of insurance shall not be construed to be a  
25 limitation in any respect upon Assignee's obligations under  
26 paragraph 16 herein.

27 **18. OBSERVE APPLICABLE LAWS:** At all times in its use  
28 and occupancy of the Premises and in the conduct of its



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

1 operations thereon, Assignee, at its cost, shall comply with all  
2 applicable federal, state, regional and municipal laws,  
3 ordinances and regulations (including but not limited to the City  
4 Charter, the Long Beach Municipal Code and Tariff No. 4) and  
5 obtain all requisite permits for the construction of improvements  
6 on the Premises and for the conduct of its operations thereon.

7           **18.1 Rule 1158.** Without limiting the foregoing,  
8 Assignee shall ensure that the Premises, and Assignee's  
9 operations on the Premises, fully comply with Rule 1158 of  
10 the South Coast Air Quality Management District, as such  
11 rule now exists or may in the future be amended, or any  
12 similar rule relating to control of petroleum coke dust  
13 emissions which may supersede said Rule 1158.

14           **18.2 Americans with Disabilities Act.** Without  
15 limiting the foregoing, Assignee shall comply with  
16 applicable provisions of the Americans with Disabilities Act  
17 (42 USCS Sections 12101, et seq.) ("Act") and regulations  
18 promulgated pursuant thereto in Assignee's use of the  
19 Premises and operations conducted thereon. Additionally, as  
20 between City and Assignee, Assignee shall be solely  
21 responsible for assuring that the Premises are in compliance  
22 with applicable provisions of said Act and related  
23 regulations and shall hold City harmless from and against  
24 any claims of failure of the Premises to comply with the Act  
25 and/or related regulations."

26           **19. WAIVER OF LIABILITY:** Assignee hereby waives any  
27 and all claims against City of Long Beach, its Board of Harbor  
28 Commissioners (individually and collectively), their officers and

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

1 employees, for damage or loss caused by a suit or proceeding,  
2 directly or indirectly attacking the validity of this Agreement,  
3 or any part thereof, or by any judgment or award in any suit or  
4 proceeding, declaring this Agreement null, void, or voidable, or  
5 delaying the same, or any part thereof, from being carried out.

6           **20. LOAD LIMIT:** No loading in excess of Eight Hundred  
7 (800) pounds per square foot or any vehicular loading in excess  
8 of an H20-S16 Highway Loading (the H20 indicating a maximum of  
9 twenty [20] tons per truck and the S16 indicating a maximum of  
10 sixteen [16] tons per axle of semi-trailer) shall be allowed on  
11 that portion of the premises extending inboard from face of wharf  
12 seventy-five (75) feet. No railroad loading shall exceed thirty-  
13 two and one-half (32.5) tons per axle. No loading in the  
14 remainder of the premises shall be such as to damage paving or  
15 underground utilities. In the event City finds that overloading  
16 by Assignee exists, Assignee, upon receipt of notice thereof from  
17 City, shall immediately take appropriate steps to correct the  
18 condition, and irrespective of such notice, shall be responsible  
19 for any damage arising therefrom. It is understood and agreed  
20 that the foregoing load limits refer to area loads.

21           **21. TAXES:** Except where contested in good faith in a  
22 court of competent jurisdiction, Assignee shall pay, prior to  
23 delinquency, all lawful taxes, assessments and other governmental  
24 or 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 Agreement. Assignee recognizes and  
27 understands that this Agreement may create a possessory interest  
28 subject to property taxation and that Assignee may be subject to

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

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

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

19           **23. SIGNS:** No signs or placards of any type or design,  
20 except safety or regulatory signs prescribed by law, shall be  
21 painted, inscribed or placed in or on the premises or any  
22 building or structure located thereon without the prior written  
23 consent of the Executive Director. Assignee agrees to remove  
24 promptly and to the satisfaction of City, at the cost and expense  
25 of Assignee, upon the expiration of the term or the earlier  
26 termination of this Agreement, any and all signs and placards  
27 placed by it upon the premises.

28           **24. TERMINATION FOR GOVERNMENT USE:** In the event the

1 United States of America, the State of California, or any agency  
2 or instrumentality of said governments (other than the City of  
3 Long Beach) shall, by condemnation or otherwise, take title,  
4 possession or the rights to possession of the premises, or any  
5 part thereof, City may, at its option, and, if the taking has  
6 substantially impaired the utility of the premises to Assignee,  
7 Assignee may, at its option, terminate this Agreement as of the  
8 date of such taking, and all further obligations of the parties  
9 shall end, except as to liabilities which shall theretofore have  
10 accrued.

11           **25. TERMINATION BY COURT DECREE:** In the event any  
12 court having jurisdiction in the matter shall render a decision  
13 which has become final and which will prevent the performance by  
14 City of any of its obligations under this Agreement, then either  
15 party hereto may terminate this Agreement by written notice, and  
16 all rights and obligations hereunder (with the exception of any  
17 undischarged rights and obligations that accrued prior to the  
18 effective date of termination) shall thereupon terminate.

19           **26. RELOCATION ASSISTANCE:** It is understood and agreed  
20 that nothing contained in this Agreement shall create any right  
21 in Assignee to relocation assistance or payment from City under  
22 the provisions of Title 1, Division 7, Chapter 16 of the  
23 California Government Code (Sections 7260 et seq.) upon the  
24 expiration of the term of this Agreement or upon its earlier  
25 termination.

26           **27. NON-DISCRIMINATION:** Assignee agrees, subject to  
27 applicable laws, rules and regulations, that no person shall be  
28 subject to discrimination in the performance of this Agreement on

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

1 the basis of race, color, religion, national origin, sex, sexual  
2 orientation, AIDS, AIDS related condition, age, disability,  
3 handicap, or Vietnam Era veteran status. Assignee shall take  
4 affirmative action to ensure that applicants are employed and  
5 that employees are treated during employment without regard to  
6 any of these bases, including but not limited to employment,  
7 upgrading, demotion, transfer, recruitment, recruitment  
8 advertising, layoff, termination, rates of pay or other forms of  
9 compensation, and selection for training, including  
10 apprenticeship. Assignee agrees to post in conspicuous places  
11 available to employees and applicants for employment notices to  
12 be provided by the City setting out the provisions of this  
13 nondiscrimination clause. Assignee shall in all solicitations or  
14 advertisements for employees state that all qualified applicants  
15 will receive consideration for employment without regard to these  
16 bases.

17           **28. WAIVER OF CLAIMS:** The parties hereto hereby waive  
18 all claims against the other for damage or loss caused by any  
19 suit or proceeding, directly or indirectly attacking the validity  
20 of this Agreement, or any part thereof, or by any judgment of  
21 award in any suit or proceeding declaring this Agreement null,  
22 void or voidable, or delaying the same, or any part thereof, from  
23 being carried out, provided that Assignee shall not be liable for  
24 payment of compensation hereunder to the extent that, during any  
25 period, it is so prevented from exercising its rights hereunder.

26           **29. CONDUCT OF OPERATIONS:** Assignee shall conduct its  
27 operations on or about the premises in such a manner as will, in  
28 the judgment of the Executive Director, in no way weaken, damage

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

1 or destroy, or tend to weaken, damage or destroy, the premises or  
2 the bulkloading facilities located thereon; and in the event  
3 Assignee at any time contemplates or performs an act which, in  
4 the judgment of the Executive Director, does or will so weaken,  
5 damage or destroy, or tend to weaken, damage or destroy them,  
6 then upon written notice from the Executive Director, Assignee  
7 shall forthwith and without delay desist from performance of such  
8 act or acts.

9           **30. ENVIRONMENTAL COMPLIANCE.** In its use and occupancy  
10 of the Premises, Assignee shall comply with all applicable  
11 environmental standards set by federal, state or local laws,  
12 rules, regulations or orders, including but not limited to any  
13 laws regulating the use, storage, generation or disposal of  
14 hazardous materials, substances or wastes ("Environmental  
15 Standards"). Assignee shall establish, maintain and observe a  
16 program of compliance with all applicable Environmental Standards  
17 ("Environmental Compliance Program", as further described in Port  
18 of Long Beach Tariff No. 4, as amended, supplemented and restated  
19 from time to time (Tariff No. 4"), Item 757). As a condition  
20 precedent to the effectiveness of this Agreement, Assignee shall  
21 submit its Environmental Compliance Program to the Executive  
22 Director for review and approval. Such review and approval shall  
23 not relieve Assignee of its obligations pursuant to this  
24 paragraph.

25           Assignee shall monitor its compliance with  
26 Environmental Standards and immediately halt and correct any  
27 incident of noncompliance. On April 1, 2003, and every two (2)  
28 years thereafter, Assignee shall submit either a certificate that

1 the Environmental Compliance Program conforms with all applicable  
2 Environmental Standards or a revised Environmental Compliance  
3 Program conforming to the applicable Environmental Standards for  
4 review and approval by the Executive Director. Review and  
5 approval of any revised Environmental Compliance Program shall  
6 not relieve Assignee of its obligations under this paragraph.

7 **30.1 Hazardous Materials, Substances and**

8 **Wastes.** Assignee shall not cause or permit any hazardous  
9 material, substance or waste to be brought upon, generated,  
10 kept or used in or about the Premises by Assignee, its  
11 agents, employees, contractors or subcontractors except in  
12 compliance with all applicable Environmental Standards.

13 **30.2 Noncompliance.** In the event of any spill or

14 discharge of hazardous materials, substances or wastes or  
15 any other incident of noncompliance with the Environmental  
16 Standards or the Environmental Compliance Program, Assignee,  
17 at its cost, shall: (i) give the Executive Director  
18 immediate notice of the incident in person, by telephone or  
19 by facsimile, followed by written notice in accordance with  
20 paragraph 37.6, providing as much detail as possible; (ii)  
21 as soon as possible, but no later than seventy-two (72)  
22 hours after discovery of an incident of noncompliance,  
23 submit a written report to City, identifying the source or  
24 cause of the noncompliance and the method or action required  
25 to correct the problem; (iii) cooperate with City or its  
26 designated agents or contractors with respect to the  
27 investigation of such problem; (iv) promptly commence  
28 remediation of the problem in accordance with a plan

1 approved by City and all governmental agencies having  
2 jurisdiction and diligently prosecute the approved plan to  
3 completion; and (v) provide City with copies of all records,  
4 including hazardous waste manifests indicating that the  
5 generator is not the City of Long Beach or any subdivision  
6 thereof. The obligations set forth in subparagraphs (iv)  
7 and (v) above shall not apply to Assignee if such incident  
8 is caused solely by City, a temporary assignee or other  
9 third party not connected with Assignee's business at the  
10 Premises.

11 **30.3 Liability for Noncompliance.** Assignee shall  
12 be liable for all costs, expenses, losses, damages, actions,  
13 claims, cleanup costs, penalties, assessments or fines  
14 arising from Assignee's failure to comply with the  
15 Environmental Standards and the Environmental Compliance  
16 Program ("Environmental Losses") including a failure to  
17 comply with any reporting requirements. Assignee shall not  
18 be liable for any losses caused solely by City, a temporary  
19 assignee or other third party not connected with Assignee's  
20 business at the Premises.

21 **30.4 Environmental Audits.** City shall have the  
22 right to conduct, at its cost, periodic audits of Assignee's  
23 compliance with the Environmental Compliance Program and  
24 management of hazardous materials, substances and wastes at  
25 the Premises. City shall provide Assignee with copies of  
26 any written reports or results of such audits promptly upon  
27 completion of such documents. In the event City's audit  
28 discloses any material noncompliance by Assignee, or any



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

1 third party connected with Assignee's business at the  
2 Premises, with the Environmental Standards or the  
3 Environmental Compliance Program, Assignee shall reimburse  
4 the City for City's cost in performing the audit.

5 **30.5 Maintenance Areas.** Notwithstanding any other  
6 provision of this Agreement, Assignee shall not conduct or  
7 permit any maintenance of mobile or portable equipment on  
8 the Premises except in full compliance with best management  
9 practices as defined in the Port of Long Beach Storm Water  
10 Pollution Prevention Program.

11 **31. ASSIGNMENT:** No concession, license, permit or  
12 privilege for the conduct of any business or other operation for  
13 profit in, upon or from the premises, and no total or partial  
14 assignment, transfer, gift or grant of control of this Agreement  
15 or of the premises, whether voluntary or involuntary, shall be  
16 valid for any purpose unless first approved by City's Board of  
17 Harbor Commissioners. Neither this Agreement nor any interest  
18 therein shall be assignable or transferable in proceedings in  
19 attachment, or garnishment or execution against Assignee or in  
20 voluntary or involuntary proceedings in bankruptcy or insolvency  
21 or receivership taken by or against Assignee or by a process of  
22 law, and possession of the whole or any part of the premises  
23 shall not be divested from Assignee in such proceedings or by any  
24 process of law without the written consent of City, and any  
25 breach of the provisions of this paragraph shall cause this  
26 Agreement to terminate immediately at the option of the City.

27 **32. FIRE PROTECTION:** All fire protection sprinkler  
28 systems, fire hydrant systems, standpipe systems, fire alarm

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

1 systems, portable fire extinguishers and other fire-protective or  
2 extinguishing systems or appliances which have been or may be  
3 installed on the premises shall be maintained by Assignee in an  
4 operative condition at all times except where repairs or  
5 replacements are occasioned by normal wear and tear, which shall  
6 be the responsibility of City. All repairs and servicing shall  
7 be made in accordance with the provisions of the Long Beach Fire  
8 Code (Uniform Fire Code, 1976 Edition, developed by the  
9 International Conference of Building Officials and the Western  
10 Fire Chiefs' Association, as modified and amended by ordinance of  
11 the City Council of the City of Long Beach) and all additions,  
12 revisions and amendments thereto, including, but not limited to,  
13 NFPA No. 13A-1976 relating to the care and maintenance of  
14 sprinkler systems.

15 **33. UTILITIES:** City shall provide all utility  
16 installations upon the premises, except telephone, and Assignee  
17 shall pay, before delinquent, all utility costs and charges  
18 resulting from its operations under this Agreement.

19 **34. DEFAULT:** If either party should fail to perform  
20 any of its obligations hereunder (except when such failure shall  
21 be excused under other provisions hereof), the other party shall  
22 have the option of terminating this Agreement as follows: The  
23 party not in default shall give written notice to the party in  
24 default, stating specifically the default relied upon by the  
25 party giving the notice as justifying termination hereof. If  
26 said default or breach is not remedied within thirty (30) days,  
27 if therein remediable, or if the party in default fails to  
28 commence promptly and attempt diligently to remedy the same where

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

1 said default or breach is not remediable within thirty (30) days  
2 after said written notice, said party not in default shall have  
3 the right forthwith to terminate this Agreement. If, within such  
4 thirty-day period, the party in default does remedy or remove  
5 said default or breach, or commences promptly and attempts  
6 diligently to remedy or remove the same where not remediable  
7 within said thirty-day period, and fully indemnifies the party  
8 not in default from any and all loss and liability resulting from  
9 such default or breach, the notice shall be withdrawn and this  
10 Agreement shall continue in full force and effect; provided,  
11 however, the remedies of City hereunder shall be cumulative and  
12 in addition to any other remedies available. Upon any such  
13 forfeiture or termination by City, all improvements of whatsoever  
14 character, constructed, erected or installed upon the premises by  
15 Assignee shall, at City's option, immediately become the property  
16 of City, as provided in Section 1207(i) of the City Charter. For  
17 the purposes of this paragraph, each of the covenants, conditions  
18 and agreements imposed upon or to be performed by one party  
19 shall, at the option of the other party, be deemed to be either  
20 covenants or conditions, regardless of how designated in this  
21 Agreement, provided, further, that the waiver or delay or failure  
22 to pursue any remedy by either party in respect to any default or  
23 breach of such covenants, conditions or agreements shall not be  
24 construed as a waiver, either total or partial, of such  
25 covenants, conditions or agreements, or of any subsequent default  
26 or breach thereof.

27           **35. DELIVERY OF POSSESSION:** Assignee agrees that, upon  
28 the termination or expiration of this Agreement, Assignee will

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

1 peaceably yield up and surrender the premises and allow City to  
2 take peaceable possession thereof.

3           **36. HOLDING OVER:** Assignee shall not hold over after  
4 the expiration of the term of this Agreement for any cause,  
5 unless other terms, conditions and provisions be agreed upon in  
6 writing by City and Assignee prior to the expiration of the term.

7           **37. MISCELLANEOUS PROVISIONS:**

8           **37.1 Waivers.** No waiver by either party at any  
9 time of any of the terms, conditions, covenants or  
10 agreements of this Agreement shall be deemed or taken as a  
11 waiver at any time thereafter of the same or any other term,  
12 condition, covenant or agreement herein contained nor of the  
13 strict and prompt performance thereof by the party obligated  
14 to perform. No delay, failure, or omission of either party  
15 to exercise any right, power, privilege or option arising  
16 from any default nor subsequent acceptance of compensation  
17 then or thereafter accrued shall impair any such right,  
18 power, privilege or option or be construed to be a waiver of  
19 any such default or relinquishment thereof of acquiescence  
20 therein. No option, right, power, remedy or privilege of  
21 either party hereto shall be construed as being exhausted or  
22 discharged by the exercise thereof in one or more instances.  
23 It is agreed that each and all of the rights, powers,  
24 options or remedies given to the parties hereto by this  
25 Agreement are cumulative, and no one of them shall be  
26 exclusive of the other or exclusive of any remedies provided  
27 by law, and that the exercise of one right, power, option,  
28 or remedy by a party shall not impair its rights to any

1 other right, power, option or remedy.

2 **37.2 Law Governing.** This Agreement shall be  
3 governed by the laws of the State of California, both as to  
4 interpretation and performance.

5 **37.3 Successors.** This Agreement shall be binding  
6 upon and shall enure to the benefit of the successors and  
7 assigns of City and shall be binding upon and enure to the  
8 benefit of the successors and permitted assigns of Assignee.

9 **37.4 Severability.** Should any of the covenants,  
10 conditions or agreements of this Agreement be held by a  
11 court of competent jurisdiction to be illegal or in conflict  
12 with any applicable law, or with any provision of the  
13 Charter of the City of Long Beach, the validity of the  
14 remaining portions or provisions shall not be affected  
15 thereby.

16 **37.5 Integration.** This document constitutes the  
17 whole agreement between City and Assignee. There are no  
18 terms, obligations or conditions other than those contained  
19 herein. No modification or amendment of this Agreement  
20 shall be valid and effective, unless evidenced by an  
21 agreement in writing and signed by the parties with the same  
22 formalities and making specific reference to this Agreement.

23 **37.6 Notices.** Any and all notices to be given  
24 under this Agreement, or otherwise, may be delivered  
25 personally or by facsimile transmission or by enclosing the  
26 same in a sealed envelope, addressed to the party intended  
27 to receive the same at its address designated herein, and by  
28 depositing in the United States Postal Service as registered

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

1 or certified mail with postage prepaid. When so given, such  
2 notice shall be effective upon delivery, if served  
3 personally or by facsimile transmission, or from the date of  
4 mailing of the same. For the purpose thereof, unless  
5 otherwise provided by notice in writing from the respective  
6 party, the address of City, and the proper party to receive  
7 any such notices on its behalf, is the Executive Director,  
8 Long Beach Harbor Department, P.O. Box 570, Long Beach,  
9 California 90801, and the address of Assignee is shown on  
10 the first page of the Agreement.

11 **37.7 Modifications.** Notwithstanding any of the  
12 provisions of this Agreement, the parties may hereafter, by  
13 mutual consent, agree to modifications thereof or additions  
14 thereto in writing. City shall have the right to grant  
15 reasonable extensions of time to Assignee for any purpose or  
16 for the performance of any obligations of Assignee  
17 hereunder.


18 **37.8 Captions.** The use of paragraph headings or  
19 captions in this Agreement is solely for the purpose of

20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //

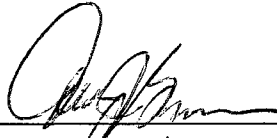
1 convenience, and the same shall be entirely disregarded in  
2 construing any part or portion of this Agreement.

3 METROPOLITAN STEVEDORE COMPANY,  
4 a California corporation

5  
6 September 9, 2002

By:   
Name: James R. Callahan  
Title: President & CEO

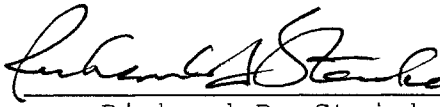
7  
8  
9 September 9, 2002

By:   
Name: Albert Garnier  
Title: Vice President

10  
11 ASSIGNEE

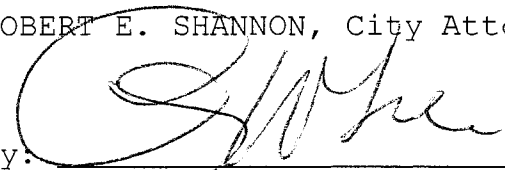
12  
13 CITY OF LONG BEACH, a municipal  
14 corporation, acting by and through  
15 its Board of Harbor Commissioners

16 11-1, 2002

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

17  
18 CITY

19  
20  
21 The foregoing Second Amended and Restated Preferential  
22 Assignment Agreement is hereby approved as to form this 30th day  
23 of Oct, 2002.

24 ROBERT E. SHANNON, City Attorney  
25  
26 By:   
27 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

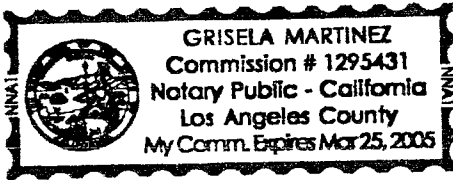
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of Los Angeles } ss.

On September 9, 2002 before me, Grisela Martinez, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
 personally appeared James R. Callahan  
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 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**

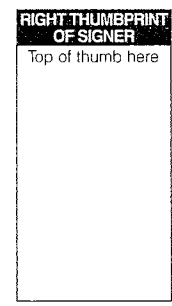
Title or Type of Document: Second Amended and Restated Preferential Assignment Agreement between City of Long Beach and Metropolitan Skredore Company  
 Document Date: September 9, 2002 Number of Pages: 52  
(inc. Table of Contents)  
 Signer(s) Other Than Named Above: Albert Gannier, Vice President & TTE page)

**Capacity(ies) Claimed by Signer**

Signer's Name: James R. Callahan

- Individual
- Corporate Officer — Title(s): President & CEO
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: Metropolitan Skredore Company





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Los Angeles } ss.

On September 9, 2002 before me, Grisela Martinez, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Albert Garnier  
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

**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**

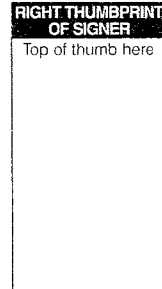
Title or Type of Document: Second Amended and Restated Preferential Assignment Agreement between City of Long Beach and Metropolitan Stevedore Company  
Document Date: September 9, 2002 Number of Pages: 52 (inc. Title page & Table of Contents)  
Signer(s) Other Than Named Above: James R. Callahan, President & CEO

**Capacity(ies) Claimed by Signer**

Signer's Name: Albert Garnier

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

Signer Is Representing: Metropolitan Stevedore Company



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND AMENDMENT TO  
SECOND AMENDED AND RESTATED  
PREFERENTIAL ASSIGNMENT AGREEMENT**

**THIS SECOND AMENDMENT TO SECOND AMENDED AND RESTATED  
PREFERENTIAL ASSIGNMENT AGREEMENT** ("Second Amendment") is made and entered into as of January 3, 2008, ~~2007~~ 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-1999, adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of November 26, 2007, and METROPOLITAN STEVEDORE COMPANY, a California corporation ("Assignee").

1. RECITALS: This Second Amendment is made and entered into with reference to the following facts and objectives:

1.1 City is the owner of certain marine terminal facilities at Pier G, Berths G212 to G215 inclusive, in the Harbor District of the City of Long Beach which include the wharves and adjacent wharf premises, ship loaders, stackers, conveyors, structures and appurtenant equipment for stockpiling and reclaiming bulk commodities ("Terminal Facilities"), and has granted a preferential assignment of the Terminal Facilities to Assignee.

1.2 As of November 1, 2002, the parties hereto entered into a Second Amended and Restated Preferential Assignment Agreement (Harbor Document No. HD-6655), as amended on June 19, 2006 (HD-6655A), (collectively, the "Agreement").

1.3 Paragraph 8.3 of the Agreement provides, in part, that "For the balance of the term, the Guaranteed Minimum Tonnage Dollar Equivalents, Minimum Annual Tariff Payments, and land rent for Parcels IX, XA, XB, XC and XD shall be renegotiated and adjusted with an effective date for each such adjustment of April 1, 2007 (for four years), and April 1, 2011 (for five years)."

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

1                   1.4 The parties to this Agreement have decided to renegotiate  
2 and adjust "the Guaranteed Minimum Tonnage Dollar Equivalents, Minimum  
3 Annual Tariff Payments, and land rent for Parcels IX, XA, XB, XC and XD" with  
4 effective dates for each such adjustment of April 1, 2007 (for four years) and  
5 April 1, 2011 (for five years).

6                   2. Effective April 1, 2007, paragraph 7 is deleted.

7                   3. Effective April 1, 2007, the introductory portion of paragraph 8 of the  
8 Agreement is deleted and restated in its entirety to read as follows:

9  
10                                   "8. **TARIFF GUARANTEE, LAND RENTAL, AND**  
11 **COMPENSATION RENEGOTIATIONS:** The parties agree that the

12 minimum tariff charges to be paid by Assignee pursuant to the  
13 provisions of paragraph 5 and 6 during the four (4) year portion of  
14 the term commencing April 1, 2007 and ending March 31, 2011  
15 shall be the dollar value equivalent of seventeen million eight  
16 hundred thousand (17,800,000) metric tons ('Guaranteed Minimum  
17 Tonnage'). Land rent for Parcels IX, XA, XB, XC, and XD is not  
18 included in such payments, but rather is in addition thereto."

19  
20                   4. Effective April 1, 2007, paragraph 8.1 is deleted and restated in its  
21 entirety to read as follows:

22  
23                                   "8.1 **Calculations for Guaranteed Minimum**  
24 **Tonnage Dollar Equivalent.** The dollar value equivalent of the  
25 Guaranteed Minimum Tonnage ('Guaranteed Minimum Tonnage  
26 Dollar Equivalent') shall be calculated as follows:

27                                   "The Guaranteed Minimum Tonnage shall be  
28 multiplied by the total of the wharfage charge set forth in Item 356

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

of Tariff No. 4 and the equipment rental charge set forth in Item 515 of Tariff No. 4.

“In the event the wharfage charges set forth in Item 356 of Tariff No. 4 or the equipment rental charge set forth in Item 515 of Tariff No. 4 are changed during the period from April 1, 2007 through March 31, 2011, the Guaranteed Minimum Tonnage Equivalent shall be adjusted as follows: (i) multiply each applicable wharfage charge and equipment rental charge by the number of days each such charge is in effect during the period from April 1, 2007 through March 31, 2011; (ii) add the results of said multiplications; and (iii) divide by 1461. The result of this calculation shall then be multiplied by seventeen million eight hundred thousand (17,800,000) metric tons.”

- 5. Effective April 1, 2007, paragraph 8.2 is deleted.
- 6. Effective April 1, 2007, paragraph 8.3 is deleted and restated in its

entirety to read as follows:

“8.3 **Adjustments.** For the balance of the term, the Guaranteed Minimum Tonnage, Guaranteed Minimum Tonnage Dollar Equivalents, and land rent for Parcels IX, XA, XB, XC and XD shall be renegotiated and adjusted with an effective date of April 1, 2011 (for five years). If the parties are unable to agree on the Guaranteed Minimum Tonnage, Guaranteed Minimum Tonnage Dollar Equivalents, and/or the land rental for Parcels IX, XA, XB, XC and XD, the amount thereof shall be determined by arbitration in accordance with the provisions of paragraph 12.”

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

1                   7.     Effective April 1, 2007, paragraph 8.5 is deleted and restated in its  
2 entirety to read as follows:

3

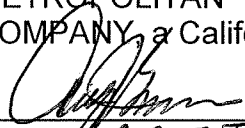
4                   "8.5   **Shortfall.** In the event Assignee fails to pay to City  
5     Tariff Payments in an amount equal to or greater than the Guaranteed  
6     Minimum Tonnage Dollar Value Equivalent for tonnage handled at or  
7     through the premises during the period April 1, 2007 through  
8     March 31, 2011, Assignee shall pay to City within thirty (30) days after the  
9     end of such four (4) year segment an amount equal to the Guaranteed  
10    Minimum Tonnage Dollar Equivalent minus Tariff Charges previously paid  
11    by Assignee ('Shortfall')."

12 //  
13 //  
14 //  
15 //  
16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //

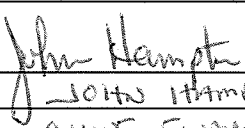
1                   8.     Except as expressly provided in this Second Amendment, all of the  
2 terms and conditions of the Agreement shall remain unchanged and in full force and  
3 effect.

4  
5 METROPOLITAN                   STEVEDORE  
6 COMPANY, a California corporation

7 October 15, 2007

8 By:   
9 Name: ALBERT J. GARNIER  
10 Title: CHIEF OPERATING OFFICER

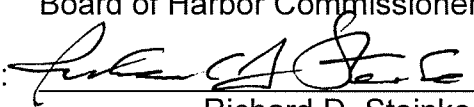
11 October 15, 2007

12 By:   
13 Name: JOHN HAMPTON  
14 Title: CHIEF FINANCIAL OFFICER

15 ASSIGNEE

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

19 1-3, 2007<sup>8</sup>

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

24 CITY

25 The foregoing Second Amendment to Second Amended and Restated Preferential  
26 Assignment Agreement is hereby approved as to form.

27 1-2, 2007<sup>8</sup>

28 By:   
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 LOS ANGELES

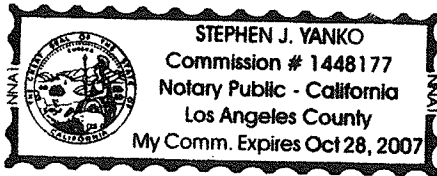
On 16 OCT. 2007 before me, STEPHEN J. YANKO, NOTARY PUBLIC  
Date Name and Title of Officer (e.g.: "Jane Doe, Notary Public")

personally appeared ALBERT J. GARNIER & JOHN HAMPTON  
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.

Stephen J. Yanko  
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: PORT OF LONG BEACH AGREEMENT

Document Date: 16 OCTOBER 2007 Number of Pages: 5

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: \_\_\_\_\_