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OFFICE OF THE SECRETARY

**FOURTH AMENDMENT TO AND
RESTATEMENT OF PREFERENTIAL ASSIGNMENT AGREEMENT**

between

CITY OF LONG BEACH

and

CALIFORNIA UNITED TERMINALS



FMC Agreement No. 003800-004

Document No. HD-4679

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 RESTATEMENT OF PREFERENTIAL ASSIGNMENT AGREEMENT
 between
 CITY OF LONG BEACH
 and
 CALIFORNIA UNITED TERMINALS**

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Attachment:

Exhibit "A" - Harbor Department Drawing No. HD 6-175
(revised 8/29/89)

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CALIFORNIA UNITED TERMINALS
FOURTH AMENDMENT TO AND
RESTATEMENT OF PREFERENTIAL ASSIGNMENT AGREEMENT

THIS FOURTH AMENDMENT TO AND RESTATEMENT OF PREFERENTIAL ASSIGNMENT AGREEMENT is entered into as of the 16th day of NOVEMBER, 1989, pursuant to Ordinance No. HD-1524 adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of OCTOBER 16, 1989, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City") and General Steamship International, Ltd., and Kerr Terminals, Inc., a joint venture doing business as CALIFORNIA UNITED TERMINALS ("Assignee").

1. **RECITALS.** This Fourth Amendment and Restatement of Preferential Assignment Agreement is made with reference to the following facts and objectives:

a. The parties entered into a Preferential Assignment Agreement ("Agreement") as of May 24, 1979 for certain marine terminal facilities owned by the City in the Harbor District of the City of Long Beach. The term of the Agreement commenced on July 1, 1979. Thereafter, the Agreement was amended on June 23, 1983, June 19, 1984 and on February 7, 1985. The First and Second Amendments by the terms thereof, were applicable only to the periods of July 1, 1983 to June 30, 1984 and July 1, 1984 to June 30, 1985, respectively, and for that reason are not restated in this Fourth Amendment. All provisions of the

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

1 Third Amendment, except as amended herein, have been
2 restated.

3 b. The Agreement is now restated in compliance
4 with Federal Maritime Commission regulations.

5 2. TERM. The term of this Agreement commenced on
6 July 1, 1979, and shall end on June 30, 2009. Notwithstanding
7 the foregoing, Assignee may terminate this Agreement as of June
8 30, 1994, June 30, 1999 and as of June 30, 2004 ("termination
9 dates") by giving written notice to City of Assignee's intent
10 to terminate at least one hundred eighty (180) days prior to
11 any of the termination dates.

12 3. EFFECTIVE DATE. The amendments included in this
13 Fourth Amendment to and Restatement of Preferential Assignment
14 Agreement and all subsequent amendments hereto, including
15 memorandum agreements setting forth renegotiated compensation
16 entered into in accordance with the provisions of paragraph 9,
17 shall be effective upon the later of (i) July 1, 1989 or (ii)
18 the first day of the month next succeeding the month in which
19 the City shall have complied with the provisions of the
20 Shipping Act of 1984 with respect to the filing of marine
21 terminal agreements.

22 4. PREMISES. City assigns to Assignee and Assignee
23 accepts:

24 a. A nonexclusive preferential assignment of
25 Parcels 1 and 2 as shown on Harbor Department Drawing No.
26 HD 6-175, revised August 29, 1989, attached hereto marked
27 Exhibit "A", and by this reference made a part hereof,
28 which parcels include Berths 12, 13, 17, 18, 19, 20, 21

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

1 portions of Berths 22 and 24, Berths 25, 26, 27, 28, 29,
2 30, 31, 31A, 33 and 34, on Piers B, C and D, the wharfs,
3 contiguous wharf premises, adjacent back areas and the
4 improvements situated thereon, but excluding the container
5 cranes located on Pier C.

6 b. An exclusive assignment of (i) the operations
7 building, together with the land upon which the operations
8 building is situated and all related facilities; (ii) the
9 offices, toilets, maintenance rooms and closets in the
10 transit sheds on Piers B and D; (iii) the corrals located
11 in the transit sheds on Piers B and D; (iv) the related
12 parking spaces located at the end of the transit sheds on
13 Piers B and D; and (v) reasonable vehicular and pedestrian
14 access between such facilities exclusively assigned and
15 the public street system contiguous with the assigned
16 premises. Such exclusively assigned facilities may be
17 used by Assignee or may be assigned by Assignee to others
18 in accordance with the provisions of Section 6 of the Port
19 of Long Beach Tariff No. 4 or any amendments, supplements
20 or reissues thereof ("Tariff No. 4") with the approval of
21 the Executive Director of the Harbor Department
22 ("Executive Director").

23 c. In the event the area now occupied by Baker
24 Commodities, Inc., pursuant to Harbor Department Document
25 No. HD-4321 ("Baker permit"), shall be relinquished to the
26 City or in the event Baker Commodities, Inc, ceases to do
27 business at that area, in which event City shall terminate
28 the Baker permit in accordance with the provisions

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-8061

1 thereof, then the permit areas described in the Baker
2 permit shall be cleared and paved. City and Assignee
3 shall thereupon initial a revised Exhibit "A"
4 incorporating the area formerly occupied by Baker
5 Commodities, Inc., into the premises assigned to Assignee
6 by this Fourth Amendment to and Restatement of
7 Preferential Assignment Agreement. As a condition
8 precedent to incorporating the Baker permit areas into the
9 assigned premises, the compensation payable by Assignee to
10 the City for the Baker permit areas shall first be
11 determined by the parties by negotiation using the
12 criteria set forth in paragraph 10.b. If the parties are
13 unable to agree on the additional compensation to be paid
14 for the use of the Baker permit areas, the additional
15 compensation shall be determined by arbitration in
16 accordance with the provisions of paragraph 10.c. Upon a
17 determination of the additional compensation (whether by
18 agreement or arbitration), the parties shall promptly
19 execute a memorandum agreement to be approved by the City
20 by minute order setting forth the additional compensation
21 to be paid by Assignee and a revised description of the
22 premises shall be attached and upon the filing thereof
23 with the Federal Maritime Commission, the provisions of
24 the memorandum agreement shall become operative.

25 d. The operations building and all other areas
26 and facilities exclusively assigned and the nonexclusively
27 assigned areas and improvements constitute the "premises"
28 or the "assigned premises."

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

1 e. Exceptions and Reservations:

2 (1) There is excepted and reserved to City,
3 its officers, agents, employees, tenants, assignees,
4 contractors, and duly authorized third persons,
5 reasonable and necessary vehicular and pedestrian
6 access across the assigned premises to those portions
7 of Piers B, C and D which are not a part of the
8 premises assigned to Assignee by this Agreement.

9 (2) It is acknowledged by Assignee that
10 drilling, repressuring and oil-recovery operations
11 are conducted upon and in the vicinity of the
12 assigned premises and upon portions of Piers B, C, D
13 and the back areas adjacent thereto are not a part of
14 the premises assigned by this Agreement. Assignee
15 also acknowledges that the shaded areas shown on
16 Exhibit "A" are areas set aside by resolutions of the
17 Board of Harbor Commissioners for oil operation
18 purposes, and may be used from time to time for such
19 purposes. There are excepted and reserved from the
20 assigned premises those fenced areas around the wells
21 shown on Exhibit "A", together with any physical
22 facilities, whether fenced or unfenced, located
23 within the areas set aside by the resolutions.
24 Assignee also acknowledges that certain wells and
25 facilities required for unitized oil operations under
26 the Fault Block IV and V Units are located in areas
27 northerly of the railroad yard, which areas are shown
28 on Exhibit "D", to the Unit Agreements for Fault

1 Block IV and V, as amended, and that the assignment
2 of premises under this Agreement is subject to said
3 Unit Agreements.

4 (3) There are reserved to the City of Long
5 Beach, to the Fault Blocks IV and V Units, to the
6 Unit Operators of Segments I and II of said Units,
7 and to their agents, contractors, subcontractors and
8 duly authorized representatives, for the purpose of
9 conducting drilling, repressuring and oil-recovery
10 operations thereon, including, but not limited to,
11 the redrilling, deepening, plugging, repairing,
12 servicing and abandonment of said wells as oil wells,
13 water source wells, or injection wells, together with
14 the right of reasonable vehicular and pedestrian
15 access over and across the assigned premises to and
16 from said wells at any and all times, (i) the right
17 to use an area approximately fifty (50) feet by one
18 hundred (100) feet surrounding each of said wells for
19 such periods of time as may be required for servicing
20 of said wells, and (ii) the right to use an area
21 approximately ninety (90) feet by one hundred eighty
22 (180) feet surrounding each of said wells for such
23 periods of time as may be required for redrilling and
24 remedial operations in connection with said wells.
25 Assignee shall vacate the surface of the area or
26 areas surrounding such well or wells as may be
27 specified by City, the Unit Operators, or their
28 authorized representatives upon twelve (12) hours'

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-8061

1 notice for well-servicing operations and upon ten
2 (10) days' notice for redrilling and remedial
3 operations, and in each instance Assignee shall
4 remove all personal property from said specified area
5 so as to allow adequate area for the oil operations.

6 (4) There are also reserved to the City of
7 Long Beach, to the Fault Block IV and V Units, to the
8 Unit Operators of Segments I and II of said Units,
9 and to their agents, contractors, subcontractors and
10 duly authorized representatives, at any or all times
11 for use in connection with drilling, repressuring and
12 oil-recovery operations, (i) the right to construct,
13 install, use, operate, maintain, repair, and renew
14 underground conduits and pipelines for the
15 transmission of water, electricity, oil, gas and
16 other hydrocarbon substances under, through and
17 across the assigned premises, and (ii) the right of
18 reasonable vehicular and pedestrian access over and
19 across the assigned premises to and from the areas on
20 Piers B, C and D.

21 f. With respect to the following described oil
22 operations areas, facilities and wells, the City, at its
23 cost, agrees:

24 (1) To promptly initiate such actions as are
25 required to remove and abandon or cause to be removed
26 or abandoned the oil well and related equipment
27 located immediately to the east of the gate at the
28 main entrance to the premises and identified on

John R. Callhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-8061

1 Exhibit "A" as Well Z-4. Upon the removal and
2 abandonment of the Well Z-4 and related equipment,
3 City shall pave or cause said area to be paved.

4 (2) To proceed immediately to use its best
5 efforts to cause oil wells identified on Exhibit "A"
6 as Wells Z-5, Z-31, Z-32, Z-35, FY-54, FY-144, Y-14,
7 Y-27, Y-55, Y-106, and Z-97 located west and
8 southwest of the gate at the main entrance to the
9 premises to be abandoned and removed or relocated.
10 Upon abandonment and removal or relocation of said
11 Wells, City shall pave or cause said areas to be
12 paved.

13 (3) To use its best efforts to cause all
14 idle and inactive production wells and related
15 equipment on the premises to be removed and
16 abandoned.

17 g. Assignee acknowledges that the City or others
18 will be engaging in a continuing construction program for
19 the improvement of the assigned premises in accordance
20 with the provisions of subparagraph 4.f. and paragraph 11.
21 Such construction program will require relinquishment of
22 occupancy by Assignee for the period of construction.
23 City agrees that with respect to such areas that will be
24 improved, it will review the construction schedule with
25 Assignee and will give Assignee as much prior notice as
26 reasonably possible in order that Assignee may adjust its
27 operations accordingly and remove its property from the
28 construction site. Assignee agrees that it will

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

1 relinquish occupancy of such portions of the assigned
2 premises as will be required for a construction site or
3 sites. Assignee and City will cooperate to the end that
4 all such planning and construction work may be
5 accomplished as expeditiously as possible with the minimum
6 disruption to Assignee's operations. Following completion
7 of a project, the site will be returned to Assignee's
8 occupancy.

9 5. MINERAL RESERVATION - TRUST. There are excepted
10 and reserved from the premises all minerals and mineral rights
11 of every kind and character now known to exist or hereafter
12 discovered, including, without limiting the generality of the
13 foregoing, oil, gas and water rights, together with the full,
14 exclusive and perpetual rights to explore for, remove and
15 dispose of said minerals, or any part thereof, from the
16 premises without, however, the right of surface entry upon the
17 premises. This Agreement and all rights granted to Assignee
18 hereunder are subject to restrictions, reservations, conditions
19 and encumbrances of record, including, without limitation, the
20 following legislative grants, to wit: Chapter 676, Statutes of
21 1911; Chapter 102, Statutes of 1925; Chapter 158, Statutes of
22 1935; Chapter 29, Statutes of 1956, First Extraordinary
23 Session; Chapter 138, Statutes of 1964, First Extraordinary
24 Session; the Charter of the City of Long Beach; and the Federal
25 navigational servitude.

26 6. USE OF PREMISES.

27 a. Assignee is authorized to use the assigned
28 premises and improvements thereon to conduct a contract

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

1 marine terminal, including the furnishing of warehousing
2 and rail and truck facilities; to use said premises for
3 the assembling, distributing, handling, loading and
4 unloading, marshalling and warehousing of cargo handled by
5 Assignee between various modes of transportation; to use,
6 operate, park and maintain cranes; to operate a truck
7 terminal and depot; for general office purposes; for the
8 operation, parking or storing of tractors, trailers and
9 chassis and other equipment used in the transportation of
10 cargo; for the loading and unloading of vessels; and for
11 any combination of the foregoing uses, including any
12 lawful purpose not specifically mentioned herein which
13 Assignee deems essential and necessary in carrying out the
14 aforementioned uses and purposes.

15 b. The premises shall not be used for any other
16 purposes without the prior consent in writing of the
17 Executive Director and in no event, anything to the
18 contrary notwithstanding, shall the premises be used for
19 any purpose which shall interfere with commerce,
20 navigation or fisheries or be inconsistent with the trusts
21 upon which premises are now or may hereafter be held by
22 the City of Long Beach and which are communicated by City
23 to Assignee.

24 c. Assignee may utilize, for its operations upon
25 the premises, one or more wharf cranes, yard horses,
26 transtainers and other container and/or cargo-handling
27 equipment, which cranes, yard horses, transtainers and
28 other equipment may, but need not, be owned by Assignee

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

1 but may be utilized by Assignee under lease, sublease,
2 preferential assignment or other contractual arrangement.
3 To the extent legally possible, any wharf cranes, yard
4 horses, transtainers or other container and/or
5 cargo-handling equipment utilized upon the assigned
6 premises, whether or not Assignee is the owner of such
7 equipment, shall be considered personal property and shall
8 not be considered an improvement constructed, erected or
9 installed upon the assigned premises for any purpose
10 whatsoever, including, but not limited to, the purpose of
11 subsection (i) of Section 1207 of the Long Beach City
12 Charter, as that section is referred to in paragraph 26 of
13 this Agreement. At any time during the term of this
14 Agreement, Assignee, its assignees, transferees or
15 encumbrancers, or the legal owner thereof, may remove said
16 equipment from the assigned premises without obtaining any
17 prior approval from City, and free from any claims of
18 City, except where such equipment is owned by City or is
19 equipment in which City may have an interest.

20 d. The Executive Director shall have the right
21 to and may make temporary or secondary assignments to any
22 person, firm or corporation to use the premises, or any
23 part thereof (with the exception of the gate house and
24 Operations Building), as provided in Tariff No. 4 together
25 with reasonable access to and from the public streets,
26 provided only that such use shall not interfere with the
27 operations of Assignee as herein authorized. In the event
28 of any such temporary or secondary assignment by City, all

1 tariff charges in connection therewith shall be billed by
2 and payable to City and shall be and remain the sole
3 property of City.

4 **7. OPERATION OF SHIPPING TERMINAL - ASSIGNEE'S**
5 **RATES, CHARGES AND PRACTICES.**

6 a. Assignee shall maintain and operate the
7 assigned premises as a contract marine terminal in
8 connection with movement of passengers and cargo between
9 various modes of transportation, in furtherance of the
10 uses described in paragraph 6 herein, and shall operate
11 said terminal in an efficient manner. The services herein
12 authorized to be performed shall be open to all members of
13 the public alike without discrimination. A schedule or
14 tariff of all terminal rates, charges, regulations, and
15 practices established, observed and enforced by Assignee
16 upon the premises shall be filed with City by Assignee
17 upon the commencement of the term of this Agreement. In
18 lieu of filing a tariff with City, Assignee may elect to
19 use and be bound by the Tariff No. 4 by filing a written
20 notice of concurrence with City and the Federal Maritime
21 Commission. In the event Assignee publishes a tariff, all
22 charges assessed by Assignee shall be fair, reasonable,
23 and nondiscriminatory and shall conform as nearly as
24 possible with like charges enacted by City and published
25 in Tariff No. 4 applying at municipal terminals of the
26 Port of Long Beach, and no change shall be made in such
27 charges, regulations, and practices without the prior
28 written approval of City. To the extent permitted by law,

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

1 the rates, charges, regulations, and practices of Assignee
2 shall be subject to review and control by City, and City
3 expressly reserves the right to disapprove any rate,
4 charge, regulation, or practice of Assignee in its
5 terminal operations (exclusive of its stevedoring
6 operations) and to require Assignee to establish, observe
7 and enforce rates, charges, regulations, and practices
8 which City shall prescribe and approve. If a dispute
9 arises between City and Assignee regarding Assignee's
10 rates, charges, rules, and practices, and cannot be
11 readily settled by the parties, either party may request
12 arbitration of the matter, and the matter shall be
13 submitted to arbitration by the parties, using the
14 arbitration procedure in subparagraph (c) of paragraph 10.

15 b. Applicable tariff charges shall be assessed
16 by Assignee at all times during the term of this
17 Agreement, regardless of whether or not, in its payment of
18 compensation to City, Assignee has reached the Guaranteed
19 Minimum Rent (as defined in paragraph 8.b[1][d]).

20 c. It is understood and agreed that Assignee
21 shall not have the exclusive right to perform stevedoring
22 services upon the premises, and that Assignee shall permit
23 any responsible person, firm or corporation to come upon
24 the premises for the purpose of performing stevedoring
25 operations when requested to do so by any steamship
26 operator or agent thereof using said premises.

27 d. It is further understood and agreed that, by
28 the grant of this non-exclusive preferential assignment to

1 Assignee for the use of the premises described herein,
2 City is not granting to Assignee the sole and exclusive
3 right to operate a shipping terminal in the Port of Long
4 Beach. City reserves the right to grant, at its sole
5 discretion, leases, permits and assignments of other
6 City-owned land and facilities to other persons, firms and
7 corporations for the conduct of shipping terminals,
8 public, proprietary, contract or otherwise.

9 **8. COMPENSATION.**

10 **a. Definitions.**

11 (1) A "twelve (12) month period" shall mean
12 a period of twelve (12) consecutive calendar months,
13 the first of which periods commenced on July 1, 1979
14 and ended on June 30, 1980.

15 (2) A "year" shall mean that twelve (12)
16 month period commencing on July 1 and ending on the
17 following June 30.

18 (3) A "ton" shall mean the basis of
19 measurement set forth in Item 302 of Tariff No. 4.
20 Said basis of measurement is some times referred to
21 as a "metric revenue ton."

22 **b. Compensation for Assigned Premises.**

23 (1) Subject to the provisions of paragraph
24 10, commencing as of the effective date of this
25 Agreement, Assignee shall pay or cause to be paid
26 each year to City as rent without deduction, set off,
27 prior notice or demand the following:

28 (a) An amount equal to fifty percent

1 (50%) of all wharfage charges (but excluding
2 wharfage on bunkers which charges shall not be
3 subject to revenue sharing) assessed in
4 accordance with the provisions of Port of Long
5 Beach Tariff No. 4, as now stated or hereafter
6 amended or restated on the first one million
7 seven hundred thousand (1,700,000) metric tons
8 ("break point") of all cargo handled at or from
9 the premises. Thereafter, Assignee shall pay to
10 City twenty-five percent (25%) of all wharfage
11 charges (excluding wharfage or bunkers which
12 charges shall not be subject to revenue sharing)
13 assessed in accordance with the provisions of
14 Tariff No. 4 in excess of the break point.

15 (b) Charges for storage and demurrage
16 assessed by Assignee shall not be subject to
17 revenue sharing and shall be retained by
18 Assignee. All other charges assessable under
19 Tariff No. 4 (except as provided in subparagraph
20 [c.]) shall be assessed and retained by City.

21 (c) In addition to the sums payable to
22 the City under the provisions of subparagraph
23 (a), Assignee shall collect and remit to the City
24 concurrently with Assignee's payments on account
25 of rent as provided in subparagraph (2) an amount
26 equal to fifty percent (50%) of all dockage
27 charges assessed for the use of the berths on the
28 premises, as now or hereafter defined. The

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6081

1 remaining fifty percent (50%) of such dockage
2 charges shall be retained by Assignee for its own
3 use.

4 (d) Notwithstanding anything to the
5 contrary appearing and subject to the provisions
6 of paragraph 10, the amount of rent payable by
7 Assignee for the use of the premises during the
8 five (5) year period ending June 30, 1994 shall
9 not be less than Twenty-seven Million Five
10 Hundred Thousand and No/100 Dollars
11 (\$27,500,000.00) which sum is referred to as the
12 "Guaranteed Minimum Rent" for said five (5) year
13 period.

14 (2) Within forty-five (45) days after the
15 departure of a vessel using the assigned premises or
16 such other period of time as may be prescribed in
17 Tariff No. 4, Item 714(c), Assignee shall pay to the
18 City for the handling of cargo at, on or from the
19 assigned premises an amount equal to fifty percent
20 (50%) of the wharfage charges (excluding wharfage on
21 bunkers and all other charges assessable under Tariff
22 No. 4 the full amount of which charges shall be
23 assessed and retained by the City) assessed in
24 accordance with the provisions of Tariff No. 4 until
25 the break point attained and thereafter an amount
26 equal to twenty-five percent (25%) of all wharfage
27 charges (excluding wharfage on bunkers and all other
28 charges assessable under Tariff No. 4 the full amount

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

1 of which charges shall be assessed and retained by
2 the City) assessed for merchandise handled in excess
3 of the break point. For the purpose of determining
4 the wharfage charges to be included in a year,
5 wharfage charges shall be deemed to have accrued as
6 of the date of departure of a vessel regardless of
7 the date of payment thereof. Any payment not
8 received by the City on or before the forty-fifth
9 (45th) day or such other period as may be prescribed
10 in Tariff No. 4, Item 714(c), shall bear interest at
11 the rate prescribed in Tariff No. 4 for delinquent
12 payments. In the event Assignee's payments on
13 account of compensation during the five (5) year
14 period ending June 30, 1994 are less than Guaranteed
15 Minimum Rent for that five (5) year period, Assignee
16 shall pay to the City on or before August 15, 1994 an
17 amount equal to the difference between the Guaranteed
18 Minimum Rent due the City and the total payments made
19 by Assignee on account of rent. Interest shall
20 accrue on the differential payment if the payment is
21 not received prior to the close of business on August
22 15, 1994.

23 (3) If the assigned premises and/or the
24 improvements thereon or any part thereof, are damaged
25 or destroyed so as to render the assigned premises
26 wholly or partially untenable or unfit for use, or
27 if there is a temporary relinquishment of occupancy
28 of portions of the assigned premises, payments on

1 account of compensation payable pursuant to the
2 provisions of this paragraph 8 shall abate or be
3 adjusted according to the nature and extent of the
4 damage sustained or relinquishment made. The amount
5 of payments on account of compensation to be paid by
6 Assignee during a period of restoration or
7 relinquishment shall be adjusted by mutual agreement
8 of the parties; and, in the event the parties cannot
9 agree upon the amount of payments on account of said
10 compensation to be paid by Assignee, the amount
11 thereof shall be determined by arbitration as
12 provided in paragraph 10.c.

13 (4) If by reason of strikes or other labor
14 disputes, lockouts, or other work stoppages occurring
15 within the Harbor District of the City of Long Beach,
16 Assignee is prevented from making substantial use of
17 the assigned premises, for the conduct of a marine
18 container terminal business, then Assignee's payments
19 on account of compensation for such period shall be
20 proportionately adjusted in an amount determined by
21 mutual agreement, commencing the thirty-first (31st)
22 day after receipt by City of notice of such strike,
23 labor dispute, lockout, or other work stoppages, and
24 such reduction shall be applicable from and after
25 said thirty-first (31st) day until Assignee is able
26 to make substantial use of the assigned premises for
27 its business. A labor disturbance shall not be
28 deemed to have ceased by reason of a temporary

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

1 resumption of work resulting from a court order or a
2 voluntary return to work under threat of court order
3 or other governmental action, provided that a
4 cessation of work thereafter occurs from the same
5 labor disturbance.

6 (5) If this Agreement is terminated or
7 revoked on any date prior to the last day of the five
8 (5) year period ending June 30, 1994, said GMR shall
9 be reduced proportionately by the percentage the
10 number of days of said five (5) year period remaining
11 after such termination or revocation bears to the
12 entire five (5) year period, taking into account also
13 any adjustments for relinquishment or retaking of any
14 portions of the assigned premises. If the payments
15 to City on account of compensation for said portion
16 of the five (5) year period as this Agreement shall
17 be in effect, are less than the figure for said
18 reduced GMR, then Assignee shall pay to City the
19 difference between the total of said payments on
20 account of compensation for said portion of said five
21 (5) year period and said prorated portion of said GMR
22 on or before the thirtieth (30th) day following the
23 effective date of such termination.

24 (6) For the purposes of paragraph 8 of the
25 Agreement, the word "compensation" shall mean and
26 include rent, the break point and the Guaranteed
27 Minimum Rent.

28 9. BOOKS AND ACCOUNTS. Assignee shall keep full and

1 accurate books, records and accounts relating to its operations
2 on the premises, including, without limitation, the tonnage of
3 net revenue cargo handled and vessel occupancy of the berths;
4 City shall have the right and privilege, through its
5 representatives and at all reasonable times, to inspect such
6 books, records and accounts in order to verify the accuracy of
7 the tariff charges due, owing and paid to City hereunder, and
8 Assignee agrees that such books, records and accounts shall be
9 made available to City at Assignee's office in the City of Long
10 Beach. In connection with the foregoing, Assignee shall file
11 or cause to be filed with the Executive Director, on forms
12 approved by the City, statements certified by Assignee's duly
13 authorized representative as follows:

14 a. On or before the twentieth (20th) day
15 following the departure of each such vessel docking at the
16 premises, a statement showing all charges which shall have
17 accrued for dockage and wharfage with reference to each
18 such vessel.

19 b. On or before the twentieth (20th) day of each
20 month, a statement showing all charges which shall have
21 accrued for wharfage where the departure of a vessel is
22 not involved and for other charges, if any, during the
23 preceding calendar month.

24 **10. COMPENSATION RENEGOTIATION-ARBITRATION.**

25 a. Compensation Renegotiation. Subject to the
26 provisions of paragraph 2, the compensation payable by
27 Assignee for use of the assigned premises shall be
28 adjusted as of July 1, 1994, July 1, 1999 and July 1, 2004

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

1 ("adjustment dates"). The adjusted compensation shall be
2 determined by the parties according to the criteria set
3 forth in subparagraph b. below on or before the sixtieth
4 (60th) day prior to the applicable adjustment date. If
5 the parties cannot agree upon the adjusted compensation,
6 the adjusted compensation shall be determined by
7 arbitration as provided in subparagraph c. below.

8 b. Criteria. In the negotiations to establish
9 the adjusted compensation, the parties shall take into
10 consideration the character of the assigned premises, the
11 value thereof, the fair rental value of similar premises
12 and facilities devoted to similar use, the terms,
13 conditions and restrictions of this Agreement, the tonnage
14 handled at the assigned premises, the return to the City
15 and the cost per container (expressed as a dollar figure
16 derived by dividing the total revenues payable to City by
17 the number of containers moving across the wharves) for
18 handling cargo at the assigned premises as compared to
19 other contract container terminals at the Port of Long
20 Beach (in which case like land values, not including
21 improvements, shall be utilized, together with appropriate
22 allowance for noncontainer operations of Assignee), and
23 any other facts and data necessary for the proper
24 determination of such figures.

25 c. Arbitration Procedure. Whenever arbitration
26 hereunder is necessary, the party desiring arbitration
27 shall select an arbitrator and give written notice to the
28 other party, who shall select an arbitrator within ten

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

1 (10) business days after receipt of such notice. If the
2 other party fails to name such second arbitrator within
3 said ten (10) business days, the arbitrator named by the
4 first party shall decide the matter. The two arbitrators
5 chosen shall, within ten (10) business days after the
6 appointment of the second, select a third. If the two
7 cannot agree upon a third, he shall be appointed by any
8 judge of the Superior Court of the County of Los Angeles,
9 California, upon application made therefor by either party
10 upon ten (10) days' written notice to the other. Upon
11 their appointment, the three arbitrators shall enter
12 immediately upon the discharge of their duties and must
13 determine the issue or issues submitted to them and file
14 their determination in writing with the Board of Harbor
15 Commissioners and Assignee within sixty (60) days after
16 their appointment. The arbitration proceedings shall be
17 in accordance with the provisions of Title 9 (Arbitration)
18 of Part 3 of the California Code of Civil Procedure.

19 d. Memorandum Agreement. Upon determination of
20 the adjusted compensation (whether by agreement or
21 arbitration), the parties shall promptly execute a
22 memorandum agreement setting forth the adjusted
23 compensation which memorandum agreement shall be approved
24 by the City by minute order. The effective date of the
25 adjusted compensation shall be the date on which the City
26 shall have complied with the provisions of the Shipping
27 Act of 1984 with respect to the filing of marine terminal
28 agreements or the appropriate adjustment date whichever is

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

1 later.

2 11. CONSTRUCTION OF IMPROVEMENTS.

3 a. City, at its cost, shall promptly commence
4 the preparation of plans and specifications for the
5 dredging at Berths 24 to 26 inclusive, Pier C to a minimum
6 depth of forty-five (45) feet at the pierhead lines
7 (existing or as modified) and upon completion thereof
8 apply for the requisite permits therefor. Upon issuance
9 of all requisite permits and compliance with the
10 provisions of the California Environmental Quality Act and
11 all other laws, rules, regulations and orders of
12 governmental agencies having jurisdiction and subject to
13 the provisions of paragraph 4.g., City shall commence the
14 dredging and other construction activities, if any,
15 necessary to obtain a minimum depth of forty-five (45)
16 feet at the pierhead line (existing or as modified) and
17 shall diligently prosecute such work to completion but in
18 no event later than June 30, 1994. All work carried out
19 by the City pursuant to this subparagraph a. shall be
20 planned and executed in a manner which is least disruptive
21 to Assignee's operating requirements.

22 b. City, at its cost, shall put or cause to be
23 put all rail track, switching and associated equipment
24 within the assigned premises, on or leading to Pier D in
25 sound working order.

26 c. Assignee may, at its sole cost and expense,
27 subject to City's prior approval, construct, erect and
28 install improvements upon the assigned premises, and may

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

1 make alterations thereto, provided that all improvements
2 of any type so constructed, erected and installed upon the
3 assigned premises must be so constructed, erected and
4 installed only in accordance with plans and specifications
5 previously submitted to the Executive Director and
6 approved in writing by him. The approval of the Executive
7 Director shall not be unreasonably withheld. City
8 acknowledges that Assignee intends to improve the existing
9 gate house and entrance area to the premises. City agrees
10 that, in the event Assignee shall make the proposed
11 improvements after complying with the provisions of this
12 paragraph 11.c. and in accordance with the provisions of
13 paragraphs 17, 20 and 21, to reimburse Assignee for its
14 actual cost of construction in the form of a credit
15 against rent payments payable to City in accordance with
16 the provisions of paragraph 8 after completion of the
17 proposed improvements; provided, however, City's
18 obligation to reimburse Assignee for such actual cost of
19 construction shall not exceed Seventy-five Thousand and
20 No/100 Dollars (\$75,000.00). The phrase "actual cost of
21 construction" shall mean and include only the contract
22 price or direct cost to Assignee for engineering,
23 permitting, demolition, construction, erection and
24 installation of the proposed improvements.

25 **12. MAINTENANCE AND REPAIR.**

26 a. Except as hereinafter provided, including the
27 provisions of paragraph 44, and without notice from City,
28 Assignee shall keep and maintain the assigned premises,

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-8061

1 and all buildings, structures and improvements of any kind
2 thereof, including, but not limited to, the buildings,
3 wharf, paving, fencing and utility fixtures, which at any
4 time during the term shall be erected and made, in good
5 and substantial repair and condition and shall perform all
6 necessary maintenance, at its sole cost and expense, to
7 the extent that from time to time the necessity of any
8 such keeping or maintenance, directly or indirectly, is
9 caused by, or arises out of, any act, omission or neglect
10 of, or any use or occupancy of, said premises by Assignee,
11 its officers, agents, employees, licensees, permittees, or
12 invitees, reasonable wear and tear, and action of the
13 elements excepted. City agrees that it shall make, or
14 cause to be made, repairs to the premises assigned by this
15 Agreement to Assignee where such repairs are occasioned by
16 reasonable wear and tear and action of the elements, which
17 repairs shall be promptly commenced and diligently carried
18 out, subject to the obtaining of all necessary permits,
19 after City has received written request to make such
20 repairs from Assignee. City shall have the right to
21 refuse to make any requested repairs in any instance where
22 it does not agree that such repairs are occasioned by
23 reasonable wear and tear and action of the elements, and
24 if the parties are unable to agree, the matter may be
25 submitted to arbitration in accordance with the provisions
26 of paragraph 10.c. City shall not be obligated to perform
27 any painting, replacement of light bulbs and glazing of
28 windows.

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

1 b. Should Assignee fail to make any repairs or
2 perform the required maintenance, for which it is
3 responsible, within thirty (30) days after receipt of
4 notice from City to make such repairs or perform the
5 required maintenance, City shall have the option to make
6 and perform such repairs or maintenance if Assignee fails
7 to do so, and Assignee agrees to reimburse City for the
8 cost thereof within ten (10) days after receipt of a
9 written request therefor. Should Assignee commence to
10 prosecute and diligently make such repairs or begin to
11 perform the required maintenance within the thirty-day
12 grace period, City shall refrain from making demand for
13 such payment until the work has been completed by
14 Assignee, and then only for such portion thereof as shall
15 have been made or performed by City. The making of any
16 repairs or the performance or maintenance by City, which
17 is the responsibility of Assignee shall in no event be
18 construed as a waiver of the duty or obligation of
19 Assignee to make future repairs or perform required
20 maintenance as herein provided.

21 c. Except as in this paragraph 12 otherwise
22 provided, the City shall be responsible for maintaining
23 the structural integrity of the pier, wharves, bulkheads
24 and retaining walls, the fender system on the assigned
25 wharves, and all buildings and structures, and shall make
26 all necessary structural repairs thereto at its sole cost
27 and expense, provided Assignee shall have given City
28 notice in writing specifying the need for such repairs,

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

1 except where damage is caused by the negligent or
2 intentional acts of Assignee, its officers, agents or
3 employees, or its invitees, in which case City may make
4 all necessary repairs, and Assignee shall reimburse City
5 for the cost thereof upon proof of such negligent or
6 intentional acts charging Assignee with responsibility
7 therefor. Should City fail to make any repairs or perform
8 such maintenance, for which it is responsible under the
9 terms hereof, within thirty (30) days after written
10 notice, Assignee may proceed to make such repairs or
11 perform the required maintenance and to deduct the cost
12 thereof from its compensation payments due to City.

13 d. Except for replacements due to normal
14 deterioration or use, any required replacement of sound
15 wharf pilings or elements of the fender system within the
16 assigned premises will be presumed to have resulted from
17 or be caused by the negligent or improper handling or
18 mooring of vessels berthed at the premises in connection
19 with the Assignee's marine terminal operations, and
20 Assignee shall reimburse City for the reasonable cost of
21 repair or replacement of said pilings or fender system
22 elements.

23 e. Assignee waives the right to make repairs at
24 the expense of City and waives the benefit of the
25 provisions of Sections 1941 and 1942 of the Civil Code of
26 the State of California relating thereto, except as
27 provided in subparagraph c. above.

28 f. Assignee agrees to provide proper containers

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 590-6081

1 for trash and to keep the premises free and clear of
2 rubbish, debris and litter at all times, including
3 maintaining the land area underlying the water berthing
4 area at said premises free and clear of debris from
5 vessels, and cargo loading and unloading operations of
6 vessels, berthed at said berths or from the wharf, and to
7 keep and maintain all of the premises in a safe, clean,
8 wholesome and sanitary condition under all applicable
9 federal, state, municipal and other laws, ordinances,
10 rules and regulations. No offensive refuse, matter, nor
11 any substance constituting any unnecessary, unreasonable
12 or unlawful fire hazard, nor material detrimental to the
13 public health shall be permitted to be or remain on the
14 premises, and Assignee shall exercise reasonable care to
15 prevent such material or matter from being or accumulating
16 upon the premises.

17 g. All fire protection sprinkler systems, fire
18 hydrant systems, standpipe systems, fire alarm systems,
19 portable fire extinguishers and other fire-protective or
20 extinguishing systems or appliances which have been or may
21 be installed on the premises shall be maintained by
22 Assignee in an operative condition at all times including
23 where occasioned by normal wear and tear. All repairs and
24 servicing shall be made in accordance with the provisions
25 of the Long Beach Municipal Code, Chapter 18.48 and all
26 revisions thereto and in accordance with the recognized
27 standards relating thereto.

28 h. Assignee agrees to provide personnel to

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 580-6061

1 accompany City's representatives on periodic inspections
2 of the premises to determine the state of maintenance and
3 repair.

4 13. LOAD LIMIT. No loading in excess of eight
5 hundred (800) pounds per square foot or any vehicular loading
6 in excess of the H20-S16 Highway Loading (the H20 indicating a
7 maximum of twenty [20] tons per truck and the S16 indicating a
8 maximum of sixteen [16] tons per axle of semi-trailer) shall be
9 allowed on any wharf apron, which is that portion of the
10 premises extending inboard from face of wharf thirty (30) feet.
11 No railroad loading shall exceed thirty-two and one-half (32.5)
12 tons per axle. No loading in the remainder of the assigned
13 premises shall be such as to damage paving or underground
14 utilities. In the event City finds that overloading by
15 Assignee exists, Assignee, upon receipt of notice thereof from
16 City, shall immediately take appropriate steps to correct the
17 condition, and irrespective of such notice, shall be
18 responsible for any damage arising therefrom.

19 14. CLEARING OF APRON. Upon the sailing of a vessel
20 which has been berthed at the assigned premises by Assignee's
21 operations pursuant to this Agreement, Assignee shall forthwith
22 clear the apron of the wharf for its entire length from the
23 waterfront edge of the wharf to the wall of the transit shed,
24 or inboard a reasonable distance from face of wharf, in order
25 that such area shall be available for use in connection with
26 cargo to be loaded or discharged from other vessels. The
27 assigned premises shall be left in a neat and clean condition
28 by the user upon the departure of each vessel. Reasonable

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

1 costs for cleanup by Assignee required by secondary or
2 temporary usage by third parties shall be reimbursed by City
3 upon request by Assignee.

4 15. PROPERTY AND CARGO UNDER ASSIGNEE'S CONTROL.

5 Any property of any kind belonging to or in the care, custody
6 or control of Assignee that may be upon the assigned premises
7 during the term of this Agreement shall be at the sole risk of
8 Assignee and Assignee hereby waives all claims against City
9 with respect to such property; provided, however, that Assignee
10 does not waive claim for injury, loss or damage to property or
11 to any person on the assigned premises in case such injury or
12 damage is caused by the negligence of City, or by any person
13 for whose conduct City is responsible.

14 16. TACKLE AND LABOR. City shall have no duty to
15 provide tackle, gear or labor for the docking or mooring of
16 vessels at the premises or for the handling of cargo.

17 17. OBSERVE APPLICABLE LAWS. Assignee shall at all
18 times, in its occupancy of the assigned premises and in the
19 conduct of its operations thereon, comply with all laws,
20 ordinances and regulations applicable thereto, enacted or
21 adopted by federal, state, municipal or other governmental
22 bodies or departments or officers thereof, including the City
23 Charter, the Municipal Code of the City, and Tariff No. 4.

24 18. UTILITY CHARGES. Assignee shall pay for all
25 water, fuel, electricity, gas and other utilities, including
26 replacement of electrical lamps or bulbs, which may be
27 furnished to, or used in or upon said premises by, Assignee
28 during the term of this Agreement. It is understood and agreed

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
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1 that any amounts paid by Assignee for such utility services
2 shall not be applied on account of the Guaranteed Minimum Rent.
3 In the event of secondary use of the premises by City as
4 provided in paragraph 6.d. hereof, the amounts payable by
5 Assignee under this paragraph 18 shall be proportionately
6 reduced.

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

19 20. LIENS. Except where contested in good faith in a
20 court of appropriate jurisdiction, and except for liens arising
21 from taxes or tax assessments, Assignee shall keep the assigned
22 premises and all improvements thereon free from liens of any
23 kind or nature arising out of its operations, including any
24 liens arising out of any labor performed for or materials
25 furnished to or on behalf of Assignee on the premises.
26 Assignee agrees that it will at all times save City free and
27 harmless and indemnify it against all claims for labor or
28 materials in connection with the construction, erection or

1 installation of Assignee's improvements made upon the assigned
2 premises, or from additions or alterations made thereto, or the
3 repair of the same, by or at the direction of Assignee, and the
4 costs of defending against any such claim, including reasonable
5 attorneys' fees.

6 21. INDEMNIFICATION. Assignee shall indemnify, hold,
7 protect and save harmless City and any and all of its boards,
8 officers, and employees from and against any and all actions,
9 suits, proceedings, claims and demands, loss, liens, costs,
10 expense and liability of any kind and nature whatsoever, for
11 injury to or death to persons, or damage to property, including
12 property owned by City, brought, made, filed against, imposed
13 upon or sustained by City, its boards, officers, or employees
14 and arising from or attributable to or caused, directly or
15 indirectly, by the use of the assigned premises and facilities
16 located thereon, or from operations conducted thereon by
17 Assignee, its officers, agents, employees or invitees,
18 including waterborne vessels, or by any person or persons
19 acting on behalf of Assignee and with Assignee's knowledge and
20 consent, express or implied, or by reason of or arising out of
21 the state of repair and maintenance of the assigned premises
22 and the facilities located thereon, or the construction,
23 improvement or repair of the assigned premises or the
24 facilities by Assignee, its officers, agents, employees or
25 invitees, or by any person or persons acting on behalf of
26 Assignee and with the knowledge and consent, express or
27 implied, of Assignee, or by reason of injury to or death of
28 employees of Assignee or others where liability arises out of

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

1 the provisions of Section 6300 et seq. of the California Labor
2 Code or any federal, state or local regulations or laws
3 pertaining to the safety of premises or of equipment located
4 upon said premises, and regardless of whether any act, omission
5 or passive negligence of the City, its boards, officers or
6 employees contributed thereto, but excluding any and all such
7 actions, suits, proceedings, claims and demands, loss, liens,
8 costs, expenses and liability, of any kind and nature
9 whatsoever, arising from or attributable to or caused directly
10 or indirectly, from the sole negligence (active or passive) or
11 the contributory active negligence of said City, its boards,
12 officers or employees, and its agents or any person or persons
13 acting on behalf of City with the City's consent, express or
14 implied, pursuant to this Agreement. Provided, however, that
15 Assignee shall not be obligated to indemnify City for injuries
16 to or death of persons or damage to property arising as a
17 direct result from City's unreasonable failure to perform
18 diligently such required maintenance pursuant to the provisions
19 of paragraph 12.

20 With respect to any such actions, suits,
21 proceedings, claims and demands, loss, liens, cost, expense or
22 liability (except those arising from or attributable to or
23 caused directly or indirectly by the sole negligence [active or
24 passive] or the contributory active negligence of City, its
25 boards, officers, employees or its agents or any person or
26 persons acting on behalf of City with the City's consent,
27 express or implied) City shall notify Assignee thereof, shall
28 tender Assignee defense thereof, and shall assist Assignee as

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 580-6081

1 may reasonably be requested in the defense thereof; and
2 Assignee shall resist and defend such action, suit or
3 proceeding, shall conduct or have conducted, the necessary
4 investigations and adjusting related thereto, and Assignee
5 shall indemnify City, its boards, officers and employees
6 against all costs, including, but not limited to, investigating
7 and adjusting costs and counsel fees, incurred with respect to
8 any such actions, suits, proceedings, claims and demands.

9 22. LIABILITY INSURANCE. As a condition precedent to
10 the effectiveness of this Agreement, and in partial performance
11 of Assignee's obligations of indemnity, Assignee shall procure
12 and maintain in full force and effect, while this Agreement
13 shall remain in effect, a policy or policies of public and
14 property damage liability insurance from a company or companies
15 authorized to do business in the State of California, with
16 minimum coverages of:

17 \$1,000,000 for death, personal injury, bodily injury
18 or loss sustained by any one person in any one
19 occurrence;

20 \$3,000,000 for death, personal injury, bodily injury
21 or loss sustained by more than one person in any one
22 occurrence; and

23 \$1,000,000 for damage to or loss of property,
24 including property of City, sustained in any one
25 occurrence; or

26 \$3,000,000 combined single limit for death, personal
27 injury, bodily injury or loss sustained by any one
28 person or more than one person in any one occurrence,
and for damage to or loss of property sustained in
any one occurrence; and

\$5,000,000 for damage to or loss of property of the
City caused by fire and explosion (Fire Legal
Liability).

The policy or policies shall provide as follows:

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
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1 a. That the City of Long Beach, the Board of
2 Harbor Commissioners, and their officers, agents, servants
3 and employees, while acting within the scope of their
4 authority, shall be named insureds, such insurance to be
5 primary and not contributing with any other insurance
6 maintained by the foregoing.

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

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

19 d. That the same shall not be cancelled or
20 coverage reduced until a thirty-day written notice of
21 cancellation has been served upon the Executive Director
22 by registered or certified mail.

23 Such insurance provided by Assignee may provide
24 for such deductibles or self-insured retention as shall be
25 acceptable to the Executive Director.

26 The City of Long Beach, the Board of Harbor
27 Commissioners, and their officers and employees shall not be
28 liable for the payment of any premiums or assessments on said

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

1 policy or policies.

2 Assignee shall deliver said policy or policies of
3 insurance, or certified or photostatic copies thereof, or a
4 certificate thereof, to the Executive Director for approval as
5 to sufficiency and to the City Attorney for approval as to
6 form. At least fifteen (15) days prior to the expiration of
7 any such policy, a certificate, showing that such insurance
8 coverage has been renewed or extended, shall be filed with the
9 Executive Director. If such coverage is cancelled or reduced,
10 Assignee shall, within ten (10) days after receipt of written
11 notice of such cancellation or reduction of coverage, file with
12 the Executive Director a certificate showing that the required
13 insurance has been reinstated or provided through another
14 insurance company or companies, and said policy shall be
15 submitted for approval as herein provided. Assignee agrees to
16 suspend and cease all operations hereunder on the premises
17 during such periods of time as the required insurance coverage
18 is not in effect. Notwithstanding any other provisions of this
19 Agreement to the contrary, upon failure to so file such
20 certificate, City may, without further notice, cancel and
21 terminate this Agreement and exercise such other rights as it
22 may have in the event of Assignee's default.

23 The procuring of such policy or policies of
24 insurance shall not be construed to be a limitation in any
25 respect upon Assignee's obligation of indemnity hereunder.

26 23. RIGHTS OF WAY. It is agreed by Assignee that
27 City shall have rights of way and rights of entry upon the
28 assigned premises for the installation, relocation, removal,

1 operation and maintenance of sewers, pipelines, conduits and
2 telephone, telegraph, light, heat or power lines, whether
3 underground or overhead, as may from time to time be determined
4 by the Board of Harbor Commissioners, as provided in subsection
5 (g) of Section 1207 of the Charter of the City of Long Beach.
6 City shall give reasonable notice to Assignee of its intent to
7 enter and work upon the premises for the purposes set out in
8 this paragraph, and City shall conduct all such work on the
9 premises, and at the point of access to the premises, so as not
10 to unreasonably interfere with the conduct of Assignee's
11 business on the premises, or its right of ingress to and egress
12 from the premises.

13 24. ACCESS. Assignee, its agents, employees and
14 third persons using the premises with the consent and approval
15 of Assignee shall have access to the premises over the street
16 system owned or controlled by City, but only in connection with
17 the business operations of Assignee on the premises. City
18 shall use its best efforts to prevent any unauthorized third
19 party from obtaining access by or through the areas excluded
20 from the premises, as indicated by the shaded areas on the
21 attached drawing, into or upon Assignee's premises.

22 City's authorized representatives shall have
23 access to the premises at any and all reasonable times, for the
24 purpose of determining whether or not Assignee is complying
25 with the terms and conditions hereof, for fire and police
26 purposes, or for any other purposes incidental to the rights or
27 duties of City.

28 The right of inspection reserved to City

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone (213) 580-8061

1 hereunder shall impose no obligation on City to make
2 inspections to ascertain the condition of the premises and
3 shall impose no liability upon City for failure to make such
4 inspection.

5 25. SIGNS. No signs or placards of any type or
6 design, except safety or regulatory signs prescribed by law,
7 shall be painted, inscribed or placed in or on the premises or
8 any building or structure located thereon without the prior
9 written consent of the Executive Director. Assignee agrees to
10 remove promptly and to the satisfaction of City, at the cost
11 and expense of Assignee, upon the expiration of the term or the
12 earlier termination of this Agreement, any and all signs and
13 placards placed by it upon the premises.

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

John R. Calhoun
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1 commences promptly and attempts diligently to remedy or remove
2 the same where not remediable within said thirty-day period,
3 and fully indemnifies the party not in default from any and all
4 loss and liability resulting from such default or breach, the
5 notice shall be withdrawn and this Agreement shall continue in
6 full force and effect. Upon any such termination by City, all
7 improvements of whatsoever character constructed, erected or
8 installed upon the premises by Assignee shall, at City's
9 option, and upon City's declaring a forfeiture, immediately
10 become the property of City as provided in subsection (i) of
11 Section 1207 of the City Charter; provided, however, the
12 remedies of each party shall be cumulative and in addition to
13 any other remedies available. For the purpose of this
14 paragraph, each of the covenants, conditions and agreements
15 imposed upon or to be performed by one party shall, at the
16 option of the other party, be deemed to be either covenants or
17 conditions, regardless of how designated in this Agreement.

18 27. WAIVERS. No waiver by either party at any time
19 of any of the terms, conditions, covenants or agreements of
20 this Agreement shall be deemed or taken as a waiver at any time
21 thereafter of the same or any other term, condition, covenant
22 or agreement herein contained nor of the strict and prompt
23 performance thereof by the party obligated to perform. No
24 delay, failure or omission of either party to exercise any
25 right, power, privilege or option arising from any default nor
26 subsequent acceptance of compensation then or thereafter
27 accrued shall impair any such right, power, privilege or option
28 or be construed to be a waiver of any such default or

1 relinquishment thereof or acquiescence therein. No option,
2 right, power, remedy or privilege of either party hereto shall
3 be construed as being exhausted or discharged by the exercise
4 thereof in one or more instances. It is agreed that each and
5 all of the rights, powers, options or remedies given to the
6 parties hereto by this Agreement are cumulative, and no one of
7 them shall be exclusive of the other or exclusive of any
8 remedies provided by law, and that the exercise of one right,
9 power, option, or remedy by a party shall not impair its rights
10 to any other right, power, option or remedy.

11 28. TERMINATION FOR GOVERNMENT USE. In the event the
12 United States of America, the State of California, or any
13 agency or instrumentality of said governments other than the
14 City of Long Beach shall, by condemnation or otherwise, take
15 title, possession or the right to possession of the premises,
16 or any part thereof, City may, at its option, and, if the
17 taking has substantially impaired the utility of the assigned
18 premises to Assignee, Assignee may, at its option, terminate
19 this Agreement as of the date of such taking, and all further
20 obligations of the parties shall end, except as to liabilities
21 which shall theretofore have accrued.

22 29. TERMINATION BY COURT DECREE. In the event any
23 court having jurisdiction in the matter shall render a decision
24 which has become final and which will prevent the performance
25 by City of any of its obligations under this Agreement, then
26 either party hereto may terminate this Agreement by written
27 notice, and all rights and obligations hereunder (with the
28 exception of any undischarged rights and obligations that

1 accrued prior to the effective date of termination) shall
2 thereupon terminate.

3 30. DELIVERY OF POSSESSION. Assignee agrees that
4 upon termination of this Agreement by the expiration thereof,
5 or the earlier termination provided for herein, Assignee will
6 peaceably yield up and surrender the assigned premises and
7 allow City to take peaceable possession thereof. Upon such
8 expiration or termination, Assignee shall remove all personal
9 property located upon the assigned premises.

10 31. HOLDING OVER. If Assignee shall holdover after
11 the expiration of this Agreement for any cause, such holding
12 over shall be deemed a right of preferential assignment from
13 month to month only, at the same applicable compensation per
14 month and upon the same terms, conditions and provisions of
15 this Agreement, unless other terms, conditions and provisions
16 be agreed upon in writing by City and Assignee.

17 32. RELOCATION ASSISTANCE. It is understood and
18 agreed that nothing contained in this Agreement shall create
19 any right in Assignee for relocation assistance or payment from
20 City upon the expiration of the term of this Agreement or upon
21 its earlier termination or upon the termination of any holdover
22 period of preferential assignment. Assignee acknowledges and
23 agrees that it shall not be entitled to any relocation
24 assistance or payment pursuant to the provisions of Title 1,
25 Division 7, Chapter 16, of the Government Code of the State of
26 California (Sections 7260 et seq.) with respect to any
27 relocation of its business or activities upon the expiration of
28 the term of this Agreement or upon its earlier termination or

1 upon the termination of any holdover period of preferential
2 assignment.

3 33. ASSIGNMENT. Except as otherwise provided herein,
4 Assignee shall not assign or transfer this Agreement or any
5 interest therein, nor its right to use the whole or any part of
6 the assigned premises, nor shall this Agreement or any interest
7 thereunder be assignable or transferable by operation of law or
8 by any process or proceeding of any court, or otherwise,
9 without the written consent of City first had and obtained.
10 City agrees that it will not unreasonably withhold such
11 consent. In the event City gives such written consent to
12 Assignee, a copy of same, together with a copy of the
13 Agreement, shall be filed with the Federal Maritime Commission.
14 Notwithstanding the foregoing, City agrees and hereby consents
15 to the assignment of this Agreement to any person, firm or
16 corporation succeeding to Assignee's business, or any
17 substantial portion thereof, through merger, consolidation, or
18 sale, provided Assignee's assignee shall agree in writing to be
19 bound by the terms, covenants and conditions contained herein.

20 34. NOTICES. Any notice required or desired to be
21 given to either of the parties under this Agreement shall be
22 well and sufficiently given if addressed, as the case may be,
23 to City as follows:

24 Executive Director
25 Long Beach Harbor Department
26 P.O. Box 570
27 Long Beach, California 90801

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

1 and to Assignee as follows:

2 California United Terminals
3 300 Pier B Avenue
4 Long Beach, California 90802

5 or to such other address or addresses as either party may
6 advise in writing, and shall be deemed to be given, if
7 delivered by hand when delivered, and if delivered by post,
8 which shall be registered or certified mail, within five (5)
9 days after mailing.

10 35. NON-DISCRIMINATION. In the performance of this
11 Agreement, Assignee shall not discriminate against any employee
12 or applicant for employment because of race, color, age,
13 religion, sex, ancestry, or national origin. Assignee will
14 take affirmative action to ensure that applicants are employed,
15 and that employees are treated during employment without regard
16 to their race, color, age, religion, sex, ancestry or national
17 origin. Such action shall include, but not be limited to, the
18 following: employment, upgrading, demotion or transfer;
19 recruitment or recruitment advertising; layoff or termination;
20 rates of pay or other forms of compensation, and selection for
21 training, including apprenticeship. Assignee shall post in
22 conspicuous places, available to employees and applicants for
23 employment, notices setting forth the provisions of this Fair
24 Employment Practices paragraph.

25 36. WAIVER OF CLAIMS. The parties hereto hereby
26 waive all claims against the other for damage or loss caused by
27 any suit or proceeding, directly or indirectly attacking the
28 validity of this Agreement, or any part thereof, or by any
judgment of award in any suit or proceeding declaring this

John R. Calhoun
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Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out, provided that Assignee shall not be liable for payment of compensation hereunder to the extent that, during any period, it is so prevented from exercising its rights hereunder.

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

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

39. SUCCESSORS. This Agreement shall be binding upon and shall enure to the benefit of the successors and assigns of City and shall be binding upon and enure to the benefit of the successors and permitted assigns of Assignee.

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

41. AMENDMENT AND TERMINATION. The parties hereto agree that this Agreement may be amended or terminated at any time by the mutual agreement of the parties. In the event a new member shall join the joint venture, or an existing member shall leave the joint venture, such change shall be accomplished by an appropriate amendment of this Agreement.

John R. Calhoun
City Attorney of Long Beach
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1 **42. RIGHT OF ENTRY AS AGENT.** In any and all cases in
2 which provision is made herein for termination of this
3 Agreement by City, or in case of abandonment or vacation of the
4 assigned premises by Assignee, and City does not elect to
5 invoke a forfeiture of said Agreement, Assignee hereby
6 irrevocably appoints City as the agent of Assignee to enter
7 upon the assigned premises and remove any and all persons
8 and/or property whatsoever situated upon the assigned premises
9 and place all or any portion of said property (except such
10 property as may be forfeited to City) in storage for the
11 account of, and at the expense of, Assignee; and in such case,
12 City may assign or lease the assigned premises upon such terms
13 as to it may seem fit; and if a sufficient sum shall not be
14 thus realized after paying expenses of such assignment or lease
15 and collecting to satisfy the Guaranteed Minimum Rent sums and
16 other sums herein reserved to be paid, Assignee agrees to
17 satisfy and pay any deficiency and to pay expenses of such
18 assignment or leasing and collecting. Assignee hereby agrees
19 to save harmless City from any cost, loss or damage arising out
20 of or caused by any such entry or re-entry upon the assigned
21 premises and/or the removal of persons and/or property and
22 storage of such property by City or its agents.

23 **43. INTEGRATION.** This Agreement constitutes the
24 whole agreement between City and Assignee. There are no terms,
25 obligations or conditions other than those contained herein.
26 No modification or amendment of this Agreement shall be valid
27 and effective, unless evidenced by an agreement in writing and
28 signed by the parties with the same formalities and making

1 specific reference to this Agreement.

2 **44. DAMAGE AND DESTRUCTION.**

3 a. City agrees that it shall make a reasonable
4 effort to place and maintain in effect, during the term of
5 this Agreement, a policy or policies of insurance,
6 insuring City against loss by reason of destruction or
7 damage of the buildings and other improvements owned by
8 City upon the assigned premises from fire and other
9 hazards covered by a standard form of fire insurance
10 policy bearing an extended coverage endorsement. City
11 further agrees that, in the event of destruction or damage
12 during the term of this Agreement to the assigned premises
13 or to the buildings or other improvements owned by City
14 thereon, by fire or any of the hazards covered by a
15 standard form of fire insurance policy bearing an extended
16 coverage endorsement, City shall apply the proceeds of
17 such insurance policy or policies with due diligence to
18 the repair or restoration of any damaged part or portion
19 of the assigned premises to a condition comparable to that
20 existing prior to such damage or destruction, provided
21 that City is able to obtain all necessary permits required
22 for such repair or restoration and further provided that
23 City's insurance carriers shall be entitled to exercise
24 their full subrogation rights under the law and the
25 insurance contracts against Assignee, its officers, agents
26 and employees or any person or persons acting on behalf of
27 Assignee and with Assignee's knowledge and consent,
28 express or implied, or by reason of or arising out of the

John R. Calhoun
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(Corporation)

STATE OF ~~CALIFORNIA~~ ^{New York} }
COUNTY OF ~~LOS ANGELES~~ ^{New York} } SS.

On October 2, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared Shayne M. Dillon and Elizabeth C Jennings

() personally known to me or () proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as _____ President and _____ Secretary on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Signature David R Goudie
DAVID R GOUDIE
Name (Typed or Printed)

L-10 (8/82)

DAVID R. GOUDIE
Notary Public - State of New York
No. 43-4582704
Qualified in Richmond County
Term Expires July 31, 1991

David R Goudie

(This area for official notarial seal)

(Corporation)

STATE OF CALIFORNIA }
COUNTY OF ~~LOS ANGELES~~ ^{SAN FRANCISCO} } SS.

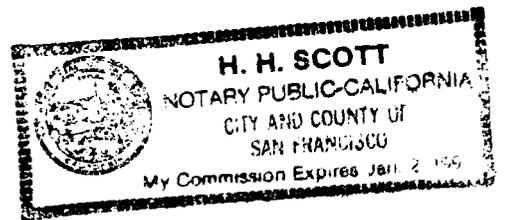
On SEPTEMBER 6, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared D.S. FONES and MAVIS NATHAN

() personally known to me or () proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as _____ President and _____ Secretary on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Signature H. N. Scott
H. N. SCOTT
Name (Typed or Printed)

L-10 (8/82)



(This area for official notarial seal)

1 state of repair and maintenance of the assigned premises
2 and the facilities located thereon (reasonable wear and
3 tear and action of the elements excepted), where such
4 destruction or damage is caused by reason of their
5 negligent acts.

6 b. In the event of total or substantially total,
7 damage or destruction of the premises and improvements
8 constructed or located thereon by City by fire or other
9 casualty, so that the premises and improvements are
10 substantially unusable by Assignee in the conduct of its
11 operations thereon, either party may terminate this
12 Agreement by giving a thirty (30) day written notice of
13 its intention to so terminate to the other.

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333 West Ocean Boulevard
Long Beach, California 90802
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GENERAL STEAMSHIP INTERNATIONAL,
LTD., a corporation

14
15
16 Dated: Sept. 6th, 1989 By [Signature]
17 President

18 Dated: Sept. 6, 1989 By [Signature]
19 Secretary

20 AND

KERR TERMINALS, INC., a
corporation

21
22 Dated: Oct. 2, 1989 By [Signature]
23 President

24 Dated: Oct. 2, 1989 By [Signature]
25 Secretary

A JOINT VENTURE, doing business
as CALIFORNIA UNITED TERMINALS

ASSIGNEE

CITY OF LONG BEACH, a municipal corporation, by order of the Board of Harbor Commissioners

Dated: Nov 16, 1989

By Paul E. Brown
Paul E. Brown,
Acting Executive Director
Long Beach Harbor Department

CITY

The foregoing FOURTH AMENDMENT TO AND RESTATEMENT OF PREFERENTIAL ASSIGNMENT AGREEMENT is hereby approved as to form this 19th day of October, 1989.

JOHN R. CALHOUN, City Attorney

By Einar C. Petersen
EINAR C. PETERSEN, Senior Deputy

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

Certified as a True and Correct Copy
A. Richard Petersen
Executive Secretary
Board of Harbor Commissioners
of the City of Long Beach,
California
Dated November 17, 1989

ECP:dmp:mm
8/30/89
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