

224-011029

L E A S E

Between

PORT OF OAKLAND

And

SCHNITZER STEEL PRODUCTS CO.

Dated

September 16, 1986



FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY



I N D E X

Paragraph

Page

1	Description of Premises.....	1
2	Term, Cancellation; Related Matters.....	1
3	Use of Premises.....	4
4	Rent.....	5
5	Dredging.....	8
6	Licenses and Permits.....	9
7	Condition and Maintenance of Premises and Improvements.....	9
8	Rodent Control.....	10
9	Promotion of Port and Facilities.....	10
10	Signs.....	10
11	Utility Charges.....	10
12	Taxes.....	10
13	No Liens.....	11
14	Hold Harmless Agreement and Liability Insurance..	11
15	Assignment and Subletting; Bankruptcy.....	14
16	Hazardous Substances.....	14
17	Default.....	15
18	Right of Entry as Agent.....	17
19	Surrender of Premises.....	17
20	Inspection of Premises.....	17
21	Holding Over.....	17
22	Waivers.....	17
23	Service of Process.....	17
24	Waiver of Claims.....	18
25	Tidelands.....	18
26	Extensions of Time.....	19
27	Board of Port Commissioners.....	19
28	Terms Binding on Successors.....	19
29	Time of Essence.....	19
30	Notice.....	19
31	Equal Opportunity; Non-Discrimination.....	19
32	Employment Resources Development Program.....	22
33	Agreement in Multiple Copies.....	22

Exhibits

A	Legal Description of Leased Premises
B	Survey Map of Leased Premises
C	Survey Map of Schnitzer Fee Property
D	Irrevocable Letter of Credit

LEASE

THIS LEASE, made and entered into this 16th day of September, 1986, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners, hereinafter called the "Port", and SCHNITZER STEEL PRODUCTS CO., a corporation, hereinafter called "Lessee" or "Schnitzer",

WITNESSETH

1. Description of Premises: For the better promotion of commerce and navigation and the development of the Port of Oakland, and for and in consideration of the faithful performance by Lessee of the agreements, covenants, terms and conditions hereof and of the payments herein provided to be made by Lessee, the Port has leased and by these presents does lease unto Lessee, approximately 80,047 square feet of water area in the "Port Area" in the City of Oakland, County of Alameda, State of California, as more particularly described and depicted respectively in Exhibit "A" and Exhibit "B" attached hereto and, by this reference, made a part hereof.

2. Term; Cancellation; Related Matters:

(a) Term and Commencement of Lease: This Lease shall become effective ("effective date") immediately following the occurrence of all of the following events:

(1) The filing of this Lease with the Federal Maritime Commission, pursuant to Section 5 of the Shipping Act of 1984, and the effectiveness of this Lease pursuant to Section 6 of said Shipping Act, or a ruling by said Commission that such filing, is not required;

(2) The expiration of thirty (30) days from and after the final adoption of the ordinance authorizing execution of this Lease. The lease term, however, shall not commence until the commencement date described below. The term of this lease shall be thirty (30) years, commencing on the date ("commencement date") that the Port receives copies of San Francisco Bay Conservation and Development Commission ("BCDC"), U.S. Army Corps of Engineers ("Corps") and all other necessary permits for the bulk loader project to be constructed on Lessee's property adjacent to the leased premises, fully executed by the permitting agency and Lessee, but in no event before the effective date.

The parties promptly will execute and record an acknowledgement of said date. The Port shall promptly process Schnitzer Steel's permit application for said project, and shall in comments and communications support Lessee's permit applications (as described in Lessee's submission to the Port of June 28, 1985). Upon receipt of BCDC, Corps and such other permits for its Project, Lessee will promptly convey copies of the same to the Port, together with a written statement as to whether such permits are acceptable to Lessee. If the Port does not receive copies of such fully executed BCDC, Corps and such other permits for Lessee's project within twenty-four (24) months of the effective date of the Port Ordinance approving this Lease, the Lease term will not commence and this Lease shall be deemed to be of no further force or effect, except that Lessee will execute and acknowledge an appropriate quit-claim deed to the Port of all of its right, title and interest under this Lease.

(b) Termination by Lessee: Lessee may, by giving three (3) months advance written notice to the Port, terminate this Lease if it decides to cease vessel loading and discharging operations on the leased premises. If Lessee conducts any vessel loading or discharging operations on the leased premises during the six (6) months following the effective date of any written termination notice hereunder, such notice shall be nullified nunc pro tunc, and this Lease shall be deemed to have remained in effect without interruption. In this event, Lessee shall promptly remit to the Port all rental payments which accrued after the effective date of the nullified termination notice.

(c) Termination by the Port: Absent default by Lessee, the Port may not terminate this Lease except as provided in this subparagraph (c). In the event that the Port in the future acquires all of Schnitzer's fee property (described hereinbelow) under the exercise or the threat of exercise of the Port's power of eminent domain, this Lease shall terminate upon the date of actual taking of lawful possession of all of Schnitzer's fee property by the Port, and Schnitzer hereby waives (1) recovery of any value of Schnitzer's fee property which might be attributable to the unexpired term of this Lease, and (2) recovery of any relocation benefits for any tangible physical property located within the leased premises based on termination of the Lease. Schnitzer's fee property is shown on Exhibit "C" attached hereto and by this reference incorporated herein. At present, Schnitzer anticipates that the only tangible physical property to

be located within the leased premises will be a mooring dolphin and accommodating walkway.

(d) Effect on Other Leases and Licenses: The March 5, 1975 Lease between the Port and Schnitzer, as amended, unless earlier terminated by Schnitzer in accordance with its provisions, shall not absent Schnitzer's default under said Lease be terminated by the Port while this Lease is in effect except as provided herein; and the April 1, 1981 License and Concession Agreement between the Port and Schnitzer pursuant to which Schnitzer is a month-to-month holdover licensee, shall not (absent Schnitzer's default under said agreement) be terminated by the Port or Schnitzer while this Lease is in effect, except as provided herein. Provided, however, that while this Lease is in effect the Port shall have the right, in the event that the Oakland Inner Harbor Deep-Draft Navigation Project has been authorized, funded, and enacted, and is actually under construction, to terminate the March 5, 1975 Lease upon at least eighteen (18) months prior written notice as to any portion of the premises leased by Schnitzer which will be part of said Project; this proviso shall apply only to the extent necessary to allow the Port to honor its binding written commitments to the U.S. Army Corps of Engineers in connection with the Project.

The April 1, 1981 License and Concession Agreement shall be deemed terminated upon the commencement date of this Lease. Except as otherwise provided hereinabove, the March 5, 1975 Lease shall be deemed terminated on the ninetieth (90th) day after Schnitzer first loads cargo from its new bulk loader. Schnitzer agrees promptly to give to the Port written notice of the date it first loads cargo from its new bulk loader, and, at the Port's request, to execute and acknowledge an appropriate quit-claim deed to the Port of all its right, title and interest under the March 5, 1975 Lease promptly upon expiration of said ninety (90) day period.

(e) General Reservation of Rights re Title, Property Interests and Public Trust Issues: The entering into of this Lease is without waiver of, or prejudice to, and shall not for any purpose be deemed an admission against interest by either party or an estoppel as to, the legal title and legal rights of each of the parties, or any matter or fact arising from or by reason of the ownership and use of their respective properties, past and prospective, including without limitation, any effect of the public trust thereon. It is agreed that the provisions of

this Paragraph 2(e) are an integral part of this Lease and apply to every paragraph thereof. Lessee does, however, agree to make the rental payments called for by this Lease and, subject to the foregoing provisions, to comply with the terms and conditions of this Lease, until such time as the Lease is either terminated as provided herein or expires.

(f) The Port and Lessee agree that the mutual assurances made in the letter dated September 16, 1986, from the Port's Executive Director to Gary Schnitzer which was countersigned by Gary Schnitzer, are part of the consideration for this Lease and to the extent not inconsistent with this Lease are hereby incorporated into this Lease and said assurances shall become the obligations of the parties hereto.

3. Use of Premises: Lessee shall use the premises for loading and discharging (1) steel scrap, owned or nonowned by Lessee, (2) other steel products but only if owned by Lessee, (3) other bulk cargo (excluding coal and sulfur) but only if it is inedible by man or animal and (4) other uses incidental thereto. Except for the handling of the commodities specifically identified above, Lessee shall not use the premises for any other purpose without prior written consent of the Port. It is further understood and agreed that the demised premises shall not be used for the berthing of non-operative vessels.

Lessee shall not use or permit the premises to be used in whole or in part during the term of this Lease for any purpose other than as hereinabove set forth, except with the prior written consent of the Port, nor for any use in violation of any present or future laws, ordinances, general rules or regulations at any time applicable thereto of any public or governmental authority, including the City of Oakland or its Board of Port Commissioners, relating to sanitation or the public health, safety or welfare, or navigation and use of the harbor, and Lessee hereby expressly agrees at all times during the term of this Lease, at its own cost, to operate the premises in a clean, wholesome and sanitary condition, and in compliance with any and all present and future laws, ordinances and general rules or regulations of any public or governmental authority now or at any time during the term of this Lease in force relating to sanitation or public health, safety or welfare, and Lessee shall at all time faithfully obey and comply with all laws, rules and regulations applicable thereto adopted by federal, state, local or other governmental bodies or departments or officers thereof.

It is understood and agreed that Lessee shall observe and strictly enforce, to the best of its ability, all applicable laws, rules and regulations controlling, regulating or prohibiting noise and air pollution, prohibiting the throwing, discharging or deposit of any sewage, litter, debris, hazardous substance or refuse matter of any kind or description into the water. Lessee shall also faithfully obey and comply with all federal, state and local laws, rules and regulations relating to the placing of fill in or the extraction of submerged materials from any water area included within the premises.

To the extent permitted by law, the rates, charges, and practices of Lessee shall be subject to review and control by the Port. A schedule or tariff of all rates, charges and practices established, observed and enforced by Lessee in connection with its use of the premises shall be filed with the Port by Lessee upon the commencement of loading or discharge of bulk cargo (other than scrap steel) not owned by Lessee and no change shall be made in such rates, charges, regulations and practices without prior written notice to the Port's Executive Director.

4. Rent: As Monthly Rent to the Port for the rights granted Lessee hereunder, and for the benefits specified herein, Lessee shall each month during the term of this lease or as said term may be extended on or before the first (1st) day of each month, pay to the Port the sum of \$1,667.64.

As additional rent to the Port for the rights granted Lessee hereunder, and for the benefits specified herein, Lessee shall each month during the term or extended term of this Lease, or for any portion of any such month, on or before the 10th day of the following month, pay to the Port with respect to each vessel loaded or unloaded at or from the demised premises an amount equal to 20% of the dockage charges which would accrue if the Port's terminal tariff were applicable to the premises leased hereunder; provided, (1) that in no event shall dockage be assessed against a single vessel loading or discharging cargo at the premises for in excess of five (5) days for a single vessel call and (2) that dockage charges shall apply only if cargo loaded on or unloaded from the vessel includes cargo other than scrap steel and finished steel product, and dockage charges shall apply only in proportion to the ratio between the weight of such cargo other than scrap steel or finished steel product and the total weight of all cargo. In addition, Lessee shall each month during the term or extended term of this Lease, or for any portion of any such month, on or before the 10th day of the follow-

ing month, pay to the Port with respect to all commodities except scrap steel and finished steel product an amount equal to 20% of the wharfage charges which would accrue if the Port's terminal tariff were applicable to the premises leased hereunder for cargo loaded, discharged or held. Lessee agrees that if the Port has adopted no wharfage rate (other than NOS) for a particular commodity to be handled, Lessee will consult with the Port and the Port will consider establishing a competitive wharfage rate for that commodity. Lessee shall submit a dockage and wharfage statement to the Port for each vessel call at the demised premises not later than fifteen (15) days following departure of the vessel. The Port shall have the right at all reasonable times to review the books and records of the Lessee with respect to vessel movements at the premises.

At the end of the first 30 months of the term of this Lease, and every 30 months thereafter during the remainder of said term ("Rent Adjustment Date"), the Monthly Rent herein provided to be paid by lessee on or before the first day of each calendar month during said remaining term, shall be adjusted as provided in this section; provided, that except as expressly otherwise provided herein in no event shall the adjusted Monthly Rent be less than the theretofore existing Monthly Rent. Pending the final determination of the adjusted Monthly Rent, Lessee shall continue to pay to the Port the amount of the Monthly Rent payable for the preceding period; and if the adjusted Monthly Rent as finally so determined should exceed the amount of Monthly Rent for the previous period, Lessee shall pay to the Port the accrued excess amount then due within 30 days after the Port sends to Lessee a written request therefor. The Monthly Rent to be payable to the Port during said remaining term shall be adjusted in accordance with Rent Adjustment Method A or, if requested by the Port or Lessee, in accordance with Rent Adjustment Method B, as follows:

In Rent Adjustment Method A, the adjusted Monthly Rent to be payable to the Port during said remaining term shall be derived by adjusting the initial Monthly Rent by the percentage increase, if any, in the scrap steel wharfage rate (determined as hereinafter provided) on each Rent Adjustment Date from said applicable rate on the date of commencement of the term of this Lease; provided, however, that in no event shall Monthly Rent increase as of any particular Rent Adjustment Date by greater than 37-1/2% of the Monthly Rent applicable immediately before that particular Rent Adjustment Date. For purposes of Rent Adjustment Method A, the scrap steel wharfage rate shall be

equivalent to the average of the then published scrap steel wharfage rates at the Port of Los Angeles and the Port of Long Beach; provided that in the event that as of a Rent Adjustment Date one or the other of said ports shall have ceased to publish a scrap steel wharfage rate through tariff or otherwise the applicable wharfage charges as of said Rent Adjustment Date shall be equivalent to the then remaining published rate; and provided further that in the event that as of a Rent Adjustment Date both of said ports shall have ceased to publish such scrap steel wharfage rates the applicable wharfage charge as of said Rent Adjustment Date shall be equivalent to the then average of the California Association of Port Authorities member ports' in Northern California published scrap steel wharfage rates.

In Rent Adjustment Method B, the adjusted Monthly Rent payable to the Port during said remaining term shall be the fair market rental value of the leased premises on the Rent Adjustment Date. The parties shall have 30 days after the Rent Adjustment Date in which to agree on the adjusted Monthly Rent. If the parties agree on the adjusted Monthly Rent during the period, they immediately shall execute and acknowledge an amendment to this Lease stating the adjusted Monthly Rent.

If the parties are unable to agree on the adjusted Monthly Rent within that period, then within 10 days after the expiration of that period each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser to appraise and set the adjusted Monthly Rent. If a party does not appoint an appraiser within 10 days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the adjusted Monthly Rent. If the two appraisers are appointed by the parties as stated in this section, they shall meet promptly and attempt to select a third appraiser meeting the qualifications stated in this section within 10 days after the last day the two appraisers are appointed. If they are unable to agree on the third appraiser, either of the parties to this Lease by giving 10 days' notice to the other party may apply to the presiding judge of the Alameda County Court for the selection of a third appraiser who meets the qualifications stated in this section. Each of the parties shall bear one half of the cost of appointing the third appraiser and one half of the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party.

Within 30 days after the selection of the third appraiser, each of the appraisers shall submit to each party the appraiser's report and opinion of the fair market rental value of the leased premises expressed in terms of adjusted Monthly Rent.

From among the opinions of adjusted Monthly Rent submitted, the median opinion shall be identified, such other opinion which is closest to said median shall be added to the median, and the average of said two opinions shall be the adjusted Monthly Rent; provided, that in no event shall the adjusted Monthly Rent be less than the initial Monthly Rent effective on the commencement date of this Lease.

In forming an opinion of the adjusted Monthly Rent, the appraiser or appraisers shall consider the highest and best use for the leased premises with regard to the restriction on use of the leased premises contained in this Lease.

All appraisers appointed shall hold the MAI designation of the American Institute of Real Estate Appraisers or its successor organization.

Rent Adjustment Method A and Rent Adjustment B shall be applied as follows: Rental Adjustment Method A shall apply on each Rent Adjustment Date except that Rental Adjustment Method B shall apply, at the request of the Port or Lessee, on the 4th and 8th Rent Adjustment Dates which occur respectively upon expiration of 120 and 240 months after commencement of the term of this Lease.

In the event that the Lessee is delinquent for a period of thirty (30) days or more in paying to the Port any compensation or other sum payable to the Port pursuant to this Lease, Lessee shall pay to the Port interest thereon at the rate of ten percent (10%) per annum from the date such sum was due and payable until paid.

5. Dredging: Lessee shall be responsible for dredging and maintenance of the demised premises to a depth of -35 feet, MLLW. The Port reserves the right from time to time to enter upon and dredge the premises to the extent reasonably necessary for implementation and/or maintenance of a vessel turning circle in the estuary adjacent to the premises; provided, however, that such entry and dredging shall not unreasonably interfere with Lessee's operations on the premises.

6. Licenses and Permits: Lessee shall obtain, at its own expense, all necessary permits, franchises, approvals, licenses and certificates necessary for the conduct of its operations pursuant to this Lease.

7. Condition and Maintenance of Premises and Improvements: Lessee hereby acknowledges that the premises are in good and tenantable condition, and agrees to accept the same in their presently existing condition, "as is". The layout, detailed plans and architectural plans of all improvements to be constructed upon the demised premises, or any additional improvements, shall be subject to the approval of the Port, and full and complete plans and specifications for all work and improvements shall be submitted to and approved by the Port prior to the commencement of construction thereof. Lessee shall be responsible for securing all necessary permits and approvals from other agencies for any such improvements.

The Port reserves the right to use and fill its premises outside the demised premises subject to the securing of any necessary permits for any such filling; provided, that any fill activities or use by the Port of its premises outside the demised premises shall not unreasonably impair or interfere with the utilization of the demised premises by Lessee; and provided further, that Lessee reserves whatever right it may claim to have to object to any fill which it believes may adversely affect the use and value of its property.

Lessee further covenants and agrees, at its own cost and expense to keep and maintain the premises in a state of good order and repair and in tenantable condition, including the ship berth upon the premises; and upon failure of Lessee to keep said premises in such state of good order and repair and tenantable condition, including maintenance dredging to a depth of thirty-five feet Mean Lower Low Water Datum (-35 feet MLLW), the Port may, after first giving Lessee ten (10) days prior written notice of its intention to do so, repair or perform any required maintenance on the same, and Lessee agrees to promptly reimburse the Port for the reasonable cost thereof, including the Port's administrative overhead. Lessee hereby expressly waives the right to make such repairs at the expense of the Port and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto. The Port shall not be obligated to make any repairs, alterations,

additions, improvements or betterments to, or perform any maintenance or dredging upon the premises during the term of this Lease. Any dredging performed upon the premises shall be performed pursuant to all legal requirements, including, specifically, the requirements of Port Ordinance No. 1332, or as said ordinance may be amended.

8. Rodent Control: Lessee shall be responsible for maintaining the demised premises free from rodents and other pests, and for eradicating or controlling conditions of said premises that would permit or encourage or provide harborage for rodents or other pests, and to the extent provided and required by state or local public health and sanitation laws. The Port shall have the right at all times to inspect the demised premises and to provide, at Lessee's cost, control measures and materials for the eradication of rodents and other pests as it may deem appropriate.

9. Promotion of Port and Facilities: Lessee shall, in good faith and with all reasonable diligence, use its best efforts to promote and aid the commerce of the Port of Oakland and the use of its facilities.

10. Signs: No signs or placards of an advertising or promotional nature shall be painted, inscribed or placed in or on the premises or any building or structure located thereon without the prior written consent of the Executive Director of the Port. Lessee agrees to remove promptly and to the satisfaction of the Port, at the cost and expense of Lessee, upon the expiration of the term or the earlier termination of this Lease, any and all signs and placards placed by it upon the premises.

11. Utility Charges: Lessee shall pay for all light, heat, water, gas or other utility services required by it in connection with its use of the premises.

12. Taxes: Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any federal, state, county, city or any tax or assessment levying agency upon any interest in this Lease or any possessory right which Lessee may have in or to the premises covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about said premises.

13. No Liens: Lessee shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the premises by Lessee and shall keep said premises and Lessee's interest under this Lease free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission.

No alterations, additions or improvements shall be made without the prior written consent of the Port.

14. Hold Harmless Agreement and Liability Insurance: It is an express condition of this Lease that the Port, members of the Board of Port Commissioners, and its officers, agents and employees shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of Lessee, its agents or employees, or third person, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this lease or occasioned by any occupancy or use of said premises or any activity carried on by Lessee in connection therewith, unless such claim and/or suit results from an injury, death or damage caused by the negligence or intentional tortious conduct of the Port, members of the Board of Port Commissioners or its officers, agents and employees, and Lessee hereby covenants and agrees to indemnify and to save harmless the Port, members of the Board of Port Commissioners, and its officers, agents and employees, from all liabilities, reasonable charges, expenses (including reasonable counsel fees) and costs, on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of same.

Lessee shall maintain in force during the term of this Lease public liability and property damage insurance, including completed operations, products, contractual and owned and non-owned automobile coverage (and, during all times that Lessee loads or discharges any bulk cargo permitted hereunder except for steel scrap and other steel products, liability insurance coverage for cargo of others in Lessee's care, custody and control) for the full limits of policies in existence from time to time, but in no event for less than the sum of Five Million Dollars (\$5,000,000.00) combined single limit; and Lessee agrees that the Port shall be named as an additional insured under such

liability insurance policy or policies. Lessee may, however, operate under a self-insured retention in an amount up to one million dollars (\$1,000,000.00) combined single limit; provided, however, that Lessee agrees that for any such self-insurance retention or deductible amount, Lessee shall provide to the Port defense and indemnification at least equal to the defense and indemnification to which the Port would be entitled as an additional insured had Lessee provided the above specified coverages respectively under Insurance Services Office form number GL 0002 (Ed. 1/73), Insurance Services Office form number GL 0404, and Insurance Services Office form number CA 0001 (Ed. 1/78).

All such policies shall be endorsed with a severability of interest or cross-liability endorsement, reading generally as follows:

Cross-Liability -- In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.

A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of this Lease and said certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to the Secretary of said Board. At least thirty (30) days' prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is cancelled or reduced, Lessee shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction of coverage, file with the Secretary of said Board a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding the provisions of Paragraph 17 of this Lease, upon failure to so file such certificate, the Port may without further notice cause this Lease to be forfeited as provided in said Paragraph 17 and exercise such other rights as it may have in the event of Lessee's default.

If the insurance policies required hereunder are not commercially available at a premium which is less than 150% of the last premium Lessee was required to pay for such policies, Lessee may elect to self-insure all or a portion of the required insurance coverage, subject to the following:

(1) As to any such self-insurance, Lessee shall provide to the Port the same defense and indemnification as in required hereinabove for the \$1,000,000.00 self-insured retention; and

(2) Lessee shall pay to the Port a sum at least equal to the amount of coverage to be self-insured as a security deposit, which sum (and any additions thereto required hereunder) shall be evidenced by cash, certificates of deposit payable to the Port, irrevocable letters of credit, or such other similar interest-bearing instruments or securities acceptable at the sole discretion of the Port. Said sum, together with any additions thereto required hereunder, is sometimes herein referred to as "the Insurance Deposit". The Insurance Deposit shall be retained by the Port as a debtor and not as a trustee. If Lessee defaults in the performance of any obligation hereunder with respect to such self-insurance, the Port may apply any portion of the Insurance Deposit as necessary to cure the default or to compensate the Port for the default, and Lessee, within 10 days after the Port's demand therefor, shall deposit with the Port the sum that is necessary to restore the Insurance Deposit to the full amount then required by this Lease. Upon the termination of this Lease and Lessee's vacation of the Premises, or upon elimination or reduction of the amount self-insured, the amount of the Insurance Deposit remaining, after curing Lessee's defaults and compensating the Port for any damages caused by Lessee, shall be returned to Lessee at Lessee's last address known to the Port.

Interest on certificates of deposit shall be payable to Lessee by the issuer thereof. The Port shall not be required to pay to or credit Lessee with any interest on any Insurance Deposit. The issuing bank shall provide that a certificate of deposit or an irrevocable letter of credit is payable in San Francisco or Oakland.

Each irrevocable letter of credit shall be in the form of Exhibit "D" attached hereto and by this

reference incorporated herein. The irrevocable letter of credit shall be confirmed by and payable at the counters of a bank in San Francisco or Oakland. Lessee agrees in good faith to use its best efforts to include the fourth paragraph of Exhibit "D", pertaining to automatic extension of the irrevocable letter of credit, in any such letter of credit submitted to the Port pursuant to this Section. If despite Lessee's good faith best efforts Lessee is unable to secure such a provision, the Port will accept a letter of credit without such provisions, but in that case unless the Port receives a written extension of the letter of credit at least 30 days before the end of the term of the letter of credit, the Port without notice to Lessee may negotiate the letter of credit and retain all proceeds as a cash deposit pursuant to the terms hereof.

15. Assignment and Subletting; Bankruptcy: Lessee shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this Lease or any interest therein, or sublease the use of same in whole or in part without written consent of the Port evidenced by resolution of its Board of Port Commissioners, which consent shall not be unreasonably withheld. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee or by any process of law, and any breach of the provisions of this paragraph shall cause this Lease to terminate immediately at the option of the Port.

In case any writ of attachment, garnishment or execution shall be levied against the interest of the Lessee under this Lease, or in case of the bankruptcy, receivership or insolvency of Lessee, Lessee shall have a reasonable time within which to secure a release of such writ or discharge from such bankruptcy, receivership or insolvency, and no default shall be declared by the Port by reason of such writ, bankruptcy, receivership or insolvency, so long as Lessee is, in good faith, diligently seeking to obtain such release or discharge, provided that the rental agreed to be paid under this Lease is paid and the other covenants of Lessee hereunder are being fully performed.

16. Hazardous Substances: No goods, merchandise or material shall be kept, stored or sold in or upon said premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on

therein or thereon; and no machinery or apparatus shall be used or operated on said premises which will in any way injure said premises; provided, however, that nothing in this paragraph contained shall preclude the Lessee from bringing, keeping or using on or about said premises and building such materials, supplies, equipment and machinery as are necessary or customary in carrying on its said businesses, or from carrying on its business in all respects as is generally usual.

17. Default: Lease is made upon the condition that if the rents or other sums which Lessee herein agrees to pay, or any part thereof, shall be unpaid on the date the same shall become due and payable, or if default be made in any of the other terms, agreements, conditions or covenants herein contained on the part of Lessee, or should Lessee abandon the Premises at any time, then and in any such event, at its option, the Port may, in addition to all other rights and remedies provided herein, declare this Lease forfeited, whereupon the Port may exercise all rights of entry and re-entry upon the demised Premises.

Lessee shall not be considered to be in default for purposes of this Paragraph until the expiration of five (5) (in the case of a failure in the payment of rent or other sums herein provided to be made by Lessee) or thirty (30) days (in all other instances) after written notice by the Port to Lessee and if, during such five (5) or thirty (30) day period, as the case may be, such failure or condition in violation of the provisions of this Lease shall have been cured or obviated by Lessee, then upon payment, performance or satisfaction of such term, covenant or condition, any right of the Lessor to terminate this Lease or re-enter upon the demised Premises by reason of such failure shall cease.

If any condition (except failure to pay rent or other sums) which would entitle the Port to declare a default is of such nature that it cannot be remedied within thirty (30) days, such declaration of default, termination and right of re-entry, or exercise of other rights of Lessor, shall be postponed as long as the Lessee shall have commenced the elimination of such condition within said thirty (30) days and shall then be continuously and diligently proceeding reasonably and in good faith to cure the same.

In the event that the Port terminates this Lease and Lessee's right to possession of the Premises, in the manner

provided by law, the Port shall be entitled to recover from Lessee possession of the premises and the following:

(a) the worth at the time of award of the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease that had been earned at the time of termination;

(b) the worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease that would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(c) the worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(d) other amounts permitted by law to compensate the Port for detriment proximately caused by Lessee's default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expense incurred by the Port (i) in retaking possession of the Premises, (ii) in cleaning and making repairs of and alterations to the Premises reasonably necessary to return the Premises to good condition for uses permitted by this Lease and in otherwise preparing the Premises for reletting, (iii) in removing, transporting, and storing any of Lessee's property left at the Premises although the Port shall have no obligation to remove, transport, or store any of such property, and (iv) in reletting the Premises, including but not limited to, brokerage commissions, advertising costs, and attorneys' fees.

The "worth at the time of award" of the amounts referred to in items (a) and (b) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (c) immediately above is computed by discounting such amount at the discount rate

of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

18. Right of Entry as Agent: In the event of a default by Lessee which remains uncured as described above, the Port in lieu of declaring a forfeiture may enter upon the Premises. To such end, and subject to the general reservation in Paragraph 2(e) above, Lessee hereby irrevocably appoints the Port its agent to remove any and all persons or property on said Premises and place any such property in storage for the account of and at expense of Lessee. In such case the Port may let the Premises upon such terms as to it may seem proper, and if a sufficient sum shall not be realized thereby, after paying expenses of such letting, to satisfy the rent and other sums herein agreed to be paid by Lessee, Lessee agrees to pay any such deficiency. Lessee further agrees to save the Port harmless from any loss or damage or claim by third parties arising out of the action of the Port in pursuance of this Paragraph.

19. Surrender of Premises: Lessee shall, at the option of the Port, at the termination of this Lease remove any improvements constructed or placed by it upon the demised Premises to the satisfaction of the Port.

20. Inspection of Premises: The Port or its duly authorized representatives, or agents and other persons for it, may enter upon said Premises at any and all reasonable times during the term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the Port.

21. Holding Over: Should the Lessee hold over the use of said Premises after this Lease has terminated in any manner, such holding over shall be deemed merely a tenancy from month to month and at a compensation or rental to be fixed by the Port, but otherwise on the same terms and conditions as herein provided. If the Federal Maritime Commission order approving this Lease requires that the Federal Maritime Commission be notified when this Lease is terminated, the Port agrees to give the required notice.

22. Waivers: No waiver by either party, at any time, of any of the terms, conditions, covenants or agreements of this Lease shall be deemed or taken as a waiver at any time thereafter

of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the Port to re-enter the Premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by the Port shall be required to restore or revive time as of the essence thereof after waiver by the Port of default in one or more instances. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this Lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

23. Service of Process: It is expressly agreed and understood that Lessee may be served with process by mailing the Summons and Complaint to the address, or substituted address, as provided in Paragraph 30 of this Lease, and that such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to the process so served, submits to the in personam jurisdiction of the court so acquired, and waives any and all objections and protest thereto.

24. Waiver of Claims: Lessee hereby waives any claim against the City of Oakland, and the Board of Port Commissioners and its officers, agents or employees, for damage or loss caused by any suit or proceeding by third parties directly or indirectly attacking the validity of this Lease, or any part thereof, or by any judgment or award in any such suit or proceeding declaring this Lease null, void or voidable, or delaying the same, or any part thereof, from being carried out.

25. Tidelands: This Lease and the Premises hereby leased shall at all times during the term of this Lease be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the act of the Legislature of the State of California, entitled, "An act granting certain lands, tidelands and submerged lands of the State of California to the City of Oakland and regulating the

management, use and control thereof", approved May 18, 1923 (Statutes 1923, Chapter 174), relating to the grant of lands to said City, and the Charter of the said City.

26. Extensions of Time: The Port shall have the right to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

27. Board of Port Commissioners: The term "Board of Port Commissioners" as used in this Lease shall mean the department of the City of Oakland presently operating under such name and as presently constituted, or any successor thereof.

28. Terms Binding on Successors: All the terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Paragraph shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

29. Time of Essence: Time is expressly declared to be of the essence of this Lease.

30. Notice: Any notice permitted or required to be served upon Lessee may be served upon it at (1) 3200 N.W. Yeon Avenue, Portland, Oregon, 97210 and (2) Foot of Adeline Street, Oakland, California, 94607; provided, however, that if Lessee shall give notice in writing to the Port of any change in said addresses, then and in such event such notice shall be given to Lessee at such substituted addresses. Any notice permitted or required to be served upon the Port may be served upon it at 66 Jack London Square, Oakland, California, 94607; provided, however, that if the Port shall give notice in writing to the Lessee of any change in said address, then and in such event such notice shall be given to the Port at such substituted address.

31. Equal Opportunity; Non-Discrimination: In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, it is expressly understood and agreed with respect to Lessee's activities upon the demised Premises:

- a. That Lessee shall not discriminate against any employee or applicant for employment because of

race, color, religion, sex, national origin, age, physical handicap, or veteran's status. Lessee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Employment Officer setting forth the provisions of this Paragraph.

- b. That Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, physical handicap, or veteran's status.
- c. That Lessee will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Employment Officer, advising the labor union or workers' representative of the Lessee's commitments under this Paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. That Lessee shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, age, national origin, physical handicap, or veteran's status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the demised Premises, including any and all services, privileges, accommodations, and activities provided thereby.
- e. That Lessee shall maintain work force records showing male, female and minority employees by job

category and similar information with respect to new hires and shall permit the Port's Equal Employment Opportunity Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port.

- f. That if Lessee has fifteen (15) or more employees, Lessee shall within ninety (90) days of the effective date of this Lease provide the Executive Director or his designee with a copy of its affirmative action program outlining the steps the tenant will undertake to promote effective utilization of minorities, women, handicapped persons, and veterans approved by an appropriate federal and state agency or by the Port or an affirmative action program required as a result of a court ordered consent decree. Thereafter any change(s) in the Lessee's affirmative action program shall be forwarded to the Port within thirty (30) days of its adoption. Such submissions shall be accorded the same level of confidentiality as provided for by the state of federal regulations or court order under which it was originally submitted.
- g. That Lessee's noncompliance with the provision of this clause shall constitute a material breach of this Lease. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:
- (1) Terminate this Lease as provided in Paragraph 17 and to re-enter and possess said land and the facilities thereon, and to hold the same as if this Lease had never been made without liability therefor; or
 - (2) Seek judicial enforcement of said covenants.
- h. The Port shall assist Lessee in preparing the required affirmative action program to secure equal employment opportunities, whenever such assistance

would be beneficial and shall be available to advise and counsel Lessee in the implementation of Lessee's Affirmative Action Program."

32. Employment Resources Development Program: It is further expressly understood and agreed with respect to Lessee's activities upon the Premises:

A. That Lessee shall cooperate in implementing the goals of the Port's Employment Resources Development Program, hereinafter called the "ERDP", as set forth in Port Resolution No. 26291, as amended to date. Tenant understands the Port's ERDP seeks to address the needs of Port tenants for a qualified work force and the needs of Oakland's chronically unemployed and underemployed for employment, by identifying employment opportunities, by providing employment training and counselling for persons seeking such opportunities and by facilitating the employment of those persons qualified to fill the jobs identified;

B. That Lessee understands that cooperation in implementing the goals of the Port's ERDP involves considering Port ERDP referrals consistent with relevant state and federal anti-discrimination regulations seeking to insure equal employment opportunity; and

C. That Lessee shall provide copies of all solicitations or advertisements for employees placed by or on behalf of Lessee to the Port's Executive Director or his designee, so that the Port may assist in providing Lessee with the names of qualified unemployed and underemployed residents of Oakland, including minorities, women, physically handicapped persons, and veterans seeking such employment or training opportunities through the Port's ERDP efforts. Notwithstanding the foregoing, Lessee retains the right to solicit internally current employees for openings prior to initiating external searches, and Lessee retains and shall at all times have the right, both to determine the qualifications of all applicants for employment and, in its sole discretion, to select the applicant it deems best qualified.

33. Agreement in Multiple Copies: This agreement is executed in multiple copies, each of which shall be deemed an original.

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

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By *William Hunter*
President
Attest *Cheryl C. Marshall*
Secretary

SCHNITZER STEEL PRODUCTS CO.,
a corporation,

By *Sony Schmitzer*
EARLY SCHNITZER EXECUTIVE VICE PRES.
(Print or Type Name and Title)
Attest *John M. Mulholland*
JOHN M. MULHOLLAND BOYER FERRIS SCRAP
(Print or Type Name and Title)

Approved as to form and
legality this 5th day
of November 1986.

Stanley R. Hebert
Port Attorney

Port Ordinance No. 2727

EXHIBIT "A"
LEASE DESCRIPTION TO SCHNITZER
STEEL PRODUCTS

All that area between the Agreed Low Tide Line as shown on the map of the Assessor's Map Book 0 page 395, City of Oakland, Alameda County, State of California and the northerly Channel Line of the San Antonio Estuary as defined the U.S. Army Corp. of Engineers, described as follows:

Beginning at the most south westerly corner of Parcel 3 as shown in M.B. 0, page 395, City of Oakland, Alameda County, State of California, said point also located on the U.S. Pierhead Line of 1963, and common to the Agreed Low Tide Line; thence

North 73°57'01" East, 532.98' on said Agreed Low Tide Line; thence

North 80°48'45" East, 59.66'; thence

North 15°58' East, 8.407; thence

North 73°57'01" East, 253.761'; thence

South 16°02'59 East, 42.504', to a point on the aforementioned U.S. Pierhead Line and the new Channel Line as proposed and defined by the U.S. Corp. of Engineers; thence along said new Channel Line; S46°50'22"W, 206.673', to a point on the existing Channel Line, said point identified as point 16B (coordinates N476043.110/E1482721.26) said coordinates also provided by the U.S. Corp. of Engineers; thence

South 80°26'09W, 679.672', thence

North 9°33'51"W, 56'.277' to the Point of Beginning.

The above described area contains 80,046.843 square feet. (1.84Ac.)

See attached map, Exhibit "B"

IRREVOCABLE LETTER OF CREDIT

Irrevocable and Transferable
Letter of Credit # _____

Amount: U.S. \$ _____

To: Port of Oakland
Attention: Director of Properties
66 Jack London Square
Oakland, California 94607 _____, 19__

Gentlemen:

For the account of _____, a California corporation, we hereby issue in your favor our Irrevocable Letter of Credit for U.S. \$ _____.

The amount of this credit is available to you by your drafts on us at sight accompanied by the following statement signed by you or any officer of the Port of Oakland.

"I certify that the amount of our drawing is due the Port of Oakland pursuant to the terms of the tenancy agreement(s) between the Port of Oakland and _____."

Drafts must clearly specify the number of this credit and be presented at our counters at _____, in Oakland, California (or in San Francisco, California) not later than the close of business on _____, 19__, or such later date as this credit shall have been extended to.

This credit shall be deemed automatically extended without amendment for additional periods of one year beginning upon the expiration of one (1) year after the date of this credit date unless thirty (30) days prior to the expiration of a one (1) year period we notify you and _____ by registered mail that we elect not to consider the letter of credit renewed for any such additional period. You may then draw on us at sight with your statement certifying that the amount drawn covers _____ outstanding obligation to you.

This Letter of Credit is subject to the "Uniform Custom and Practice for Documentary Credits" (1983 Revision), International Chamber of Commerce Publication No. 290.

We engage with you that drafts drawn under and in compliance with the terms of this credit will be duly honored by us on delivery of documents as specified.

Very truly yours,

Authorized Signature and Title