

224 200484

Approved as to Form
By General Counsel
December 6, 1990

RECEIVED

COMMERCIAL LEASE
(LESSOR-OWNED IMPROVEMENTS)

'91 MAR -7 10:24

FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY
Non-0
M.P. D5.44

THIS LEASE is made and entered into this 1st day of March, 1991, by and between **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware corporation, (herein "Lessor"), and **mitsui O.S.K. LINES LTD**, A Japanese Corporation, (herein "Lessee").

PART I
BASIC LEASE TERMS

A. **PREMISES:**

The term "Premises" shall refer to the land and all improvements and all facilities owned or controlled by Lessor at or near the city of Oakland, County of Alameda, State of California, as shown on Drawing No. 23976, dated April 26, 1979, attached hereto as Exhibit "A" and drawing dated February 28, 1991, attached hereto as Exhibit "A1" and made a part hereof and shall refer only to that space occupied solely by Lessee under this Lease, together with any loading dock, parking space, or any other portion of the building or structure appurtenant to the building which Lessee has exclusive use of.

B. **EFFECTIVE DATE:**

This Lease shall take effect on March 1, 1991, ("Effective Date").

C. **TERM:**

This Lease Agreement shall commence upon its being effective pursuant to the requirements of the Federal Maritime Commission for when this Lease Agreement becomes effective or ruling by said Commission that this Lease Agreement need not be filed, or on March 1, 1991, (Commencement Date) whichever date is later in time and shall run for the Term of ten consecutive months from the commencement. ("Lease Term") and shall thereafter continue on a month-to-month basis until terminated hereunder.

D. TERMINATION:

This Lease shall be terminable by either party at any time without cause on ninety (90) days' advance written notice to the other.

Lessee's Initials *S. J.*

E. USE:

The Premises shall be used by Lessee solely and exclusively as a marine cargo handling operation including container freight station and related maintenance.

F. RENT:

Commencing as of the Effective Date of this Lease Agreement, the monthly rent shall be as follows:

	<u>Shed Space</u>	<u>Open Space</u>	<u>Office Space</u>
First 12 months	.26¢ per sq. ft.	.06¢ per sq. ft.	.80¢ sq. ft.
Second 12 months	.28¢ per sq. ft.	.06¢ per sq. ft.	.80¢ sq. ft.
Third 12 months	.30¢ per sq. ft.	.06¢ per sq. ft.	.80¢ sq. ft.

- 1) First Twelve (12) months-ELEVEN THOUSAND FIVE HUNDRED DOLLARS (\$11,500) per month, payable monthly in advance;
- 2) Second twelve (12) months - TWELVE THOUSAND AND EIGHTY-FIVE DOLLARS (\$12,085) per month, payable monthly in advance and
- 3) Third twelve (12) months - TWELVE THOUSAND SIX HUNDRED SIXTY-FIVE DOLLARS (\$12,665) per month, payable monthly in advance.

Monthly Rent is due on the first day of each month, however, Lessee shall have until the tenth (10th) day of each month to pay the rent unless payment of rent is delayed beyond Lessee's control, in which event payment will be made as soon thereafter as possible without penalty.

G. **METHOD OF RENT ADJUSTMENT:**

Rent as set forth in Section F above shall not be subject to revision unless Lessee requests material changes to this Lease. Notwithstanding the fact that Section F sets out rental rates for 36 months, the Lease Term is for 10 months, although if the lease continues on a holdover basis after the Lease Term the rents shall be as set forth in Section F. After the expiration of 36 months, the rent then in effect shall be subject to adjustments under Section 34 (Holdover) of the attached General Lease Terms.

H. **ADDRESSES FOR NOTICES:**

All notices to either Lessor or Lessee shall be addressed as follows:

To Lessor: **SOUTHERN PACIFIC TRANSPORTATION COMPANY**
San Francisco Regional Office - Real Estate
One Market Plaza, Suite 912
San Francisco, CA 94105

To Lessee: **MITSUI O.S.K. LINES LTD**
50 California Street, Suite 660
San Francisco, CA 94111

I. **ADDRESS FOR PAYMENTS TO LESSOR:**

Checks shall be made payable to Lessor and shall be mailed to File 61860, P. O. Box 60000, San Francisco, California 94160-1860.

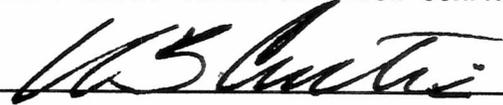
J. **HAZARDOUS MATERIALS:**

Lessee is permitted to handle hazardous materials in accordance to the terms and conditions attached hereto as Exhibit "D" and made a part hereof.

The foregoing Basic Lease Terms and the General Lease Terms set forth in attached Part II are incorporated into and made parts of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease in duplicate the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: 

Title: ~~Its Vice President~~

NETSUI O.S.K. LINES LTD

By: 

Title: Assistant Vice President

MITSUI89.GEL
1jh03/01/91

PART II
GENERAL LEASE TERMS

1. PREMISES AND TERM

Lessor hereby leases to Lessee the Premises for the tenancy shown in the Basic Lease Terms, subject to the terms and conditions as set forth in this Lease.

2. USE

If Lessee does not commence the use of the Premises for the purposes herein specified or discontinues such use for a period of ninety (90) days, Lessor may at its option terminate this Lease on fifteen (15) days' advance written notice.

Lessee shall not use the Premises or any portion thereof for any use other than that stated in the Basic Lease Terms, and shall not make any alterations thereto except as required for such use.

Lessee shall not permit to be placed on the Premises or improvements any signs or notices not solely related to the business of Lessee conducted on the Premises.

Lessee shall not permit any damage, nuisance or waste on the Premises.

Lessee shall have access to the Premises without any restrictions twenty-four (24) hours a day, three hundred and sixty-five (365) days a year. It is the intent of the parties to this Lease Agreement that Lessee's use of and access to the Premises shall be as broad and unrestricted as possible.

Lessee, at Lessee's expense, but only with regard to the Premises, shall arrange for the filing of any map required under any subdivision map act and of any environmental impact report required only of Lessee by any governmental body having jurisdiction in the matter. If the filing of any such maps or of any environmental impact report is so required of both Lessee and Lessor or of any other person or entity, then Lessee shall be responsible for the expense thereof only in the proportion that the Premises bears to the entire area so involved. Whether Lessor contributes to any expenses for filing such maps or environmental impact reports shall be at its sole option; if any cost attributable to the area outside the Premises is not paid by Lessor, Lessee may at its option terminate the lease or assume said costs.

Should any governmental body seek to impose any condition on approval of Lessee's use of the Premises or the zoning thereof, or for the issuance of any map, license, or permit, Lessee covenants to notify Lessor accordingly; and if such condition is unacceptable to Lessee for any reason, Lessee may terminate this lease.

3. **CONDITION OF PREMISES**

- A. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Premises or with respect to the suitability of the same for the conduct of Lessee's business. Lessee acknowledges that Lessee has independently investigated the Premises to determine if the Premises are suitable for Lessee's intended use.
- B. Lessor hereby expressly agrees that Lessee shall not be held responsible for any pre-existing condition of, on, in, under, or about the Premises, including, but not limited to the presence of any hazardous or environmentally dangerous substances. Throughout this Lease the term "pre-existing condition" shall be deemed to mean the condition of, on, in, under and about the land and improvements comprising the Premises on the Effective Date of this Lease.

4. **SUBTERRANEAN FACILITIES**

The absence of markers, monuments or maps indicating the presence of subterranean facilities, whether belonging to lessor or otherwise, does not constitute a warranty or representation that none exist. Lessee accepts this lease with full cognizance of the potential presence of such, acknowledging that the costs of lessee's use may increase by reason thereof, and acknowledging that the owner or owners thereof may have acquired the right to continue to maintain such facilities by the passage of time.

5. **PAYMENT/REFUND OF RENT**

Lessee shall pay to Lessor as rent for the Premises the amount specified in Section F of the Basic Lease Terms, payable at the times set forth therein, without deduction, setoff, prior notice or demand. If the Effective Date of this Lease is other than the first day of the calendar month rent shall be prorated for the fractional month and the rent for said fractional month, together with the rent for the first full month, shall be payable in advance upon Lease execution. Thereafter, rent shall be payable in advance, without deduction or offset, on the first day of each calendar month during the Lease Term or any holding over thereof. Upon termination of this Lease, unless Lessee is then in default, any unearned portion of any rent paid in advance shall be refunded to Lessee upon Lessee's written demand therefor if made within thirty (30) days after termination.

6. **RENT REVISION**

After the expiration of 36 months from the Commencement Date the rent then in effect shall be revised in the manner provided in Section 34 hereof or to the fair rental value at the time of said revision. If, for any reason, the rent is not revised at such time or times as herein specified, the rent shall continue to be subject to revision in the manner herein specified and, when so revised, shall be retroactive to the date the revised rent should have become effective, notwithstanding Lessee's acceptance of a lesser amount and notwithstanding any billing by Lessor for a lesser amount.

7. **TAXES AND ASSESSMENTS**

Lessee agrees to pay all taxes, assessments or charges which at any time may be levied by any federal, state, county, city or other tax or assessment levying body upon its goods, merchandise, fixtures, appliances, equipment and property owned by it, in or about said Premises. Except as otherwise stated in this paragraph, Lessor agrees to pay all other taxes, assessments and charges which may be levied by any federal, state, county, city or other tax or assessment levying body upon any interest or right which Lessor may have in or to the Premises.

8. **INDEMNIFICATION**

Lessee shall indemnify, defend, protect and hold Lessor harmless from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees) arising from or in connection with, or caused by (i) any act, omission or negligence of Lessee or any sub-lessee of Lessee, or their respective contractors, licensees, invitees, agents, servants or employees, occurring in or on the Premises, (ii) any use (but not the pre-existing condition) of the Premises, or any accident, injury, death or damage to any person or property occurring in, on or about the Premises, or any part thereof, used by Lessee, excluding any such claims, loss, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees) arising from or in connection with, or caused by, Lessor's active negligence or willful misconduct, or the pre-existing condition of the Premises.

9. **COMPLIANCE WITH LAW AND ENVIRONMENTAL IMPAIRMENT**

Lessee, at Lessee's expense, shall comply with all applicable laws, regulations, rules and orders with respect to Lessee's use, but not the pre-existing condition of the Premises, including, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, waste disposal, and water and air quality, and shall furnish satisfactory evidence of such compliance upon request of Lessor.

Lessor, at Lessor's expense, shall comply with all applicable laws, regulations, rules, and orders with respect to the pre-existing condition of the Premises or Lessor's use of the Premises, including without limitations, those relating to construction, grading, signage, health, safety, noise, environmental protection, waste disposal and water and air quality.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Premises due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean all property affected thereby but only to the extent the property has been so affected thereby, and not beyond the extent of cleaning the property to restore it to its condition prior to the said discharge, leakage, spillage, emission or pollution of any type, to the satisfaction of any governmental body having jurisdiction thereover.

Lessee shall hold harmless, release, defend and indemnify Lessor from and against all liability, claim, cost or expense (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) incurred by Lessor as a result of Lessee's breach of this section.

Lessor shall hold harmless, release, defend to and indemnify Lessee from and against all liability, claim, cost or expense (including without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) incurred by Lessee as a result of Lessor's breach of this section.

10. **INSURANCE**

While this Lease is in effect, Lessee, at Lessee's expense, shall maintain and furnish evidence of insurance set forth in the GIR ("General Insurance Requirements") attached hereto as Exhibit "B" and made a part hereof.

Notwithstanding any provision of this Lease the insurance provided by Lessee under the terms of this Lease shall not be construed to provide coverage for Lessor for those liabilities or obligations for which Lessor is responsible under the terms of this Lease.

11. **NOISE LEVELS NEAR RAILROAD TRACKS**

Lessee hereby recognizes and acknowledges that railroad tracks are located on or adjacent to the Premises.

Lessee recognizes that the operation of trains over the tracks does and shall produce noise levels which may be considered objectionable by the employees, agents, tenants, or invitees of Lessee. Therefore, Lessee agrees that no legal action or complaint of any kind whatsoever shall be instituted against Lessor on Lessee's behalf as a result of such noise levels and to indemnify and save harmless Lessor against any loss, damage,

liability or expense either might incur as a result of such action being taken by Lessee's employees, agents, tenants or invitees. This Section 11 shall not apply if the Premises are classified by Lessor as "non-operating." A property is classified as non-operating when the property is no longer used for railroad operations and the tracks either abandoned in place or removed altogether.

12. **RESERVATIONS**

Lessor hereby excepts and reserves the right, to be exercised by Lessor and by any other who has obtained or may obtain permission or authority from Lessor so to do, to

- (a) operate, maintain, review and relocate any and all existing pipe, track (if any), power and communication (including without limitation fiber optic) lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises; and
- (b) construct, operate, maintain, review and relocate such additional facilities of the same character as shall not unreasonably interfere with Lessee's use of the Premises as specified in Section E of the Basic Lease Terms.

Any such construction, operation, relocation or maintenance shall not be done at Lessee's expense unless such work is requested by Lessee or done for the benefit of Lessee.

13. **MINERAL RIGHTS**

Lessor reserves for itself and those to whom it grants such right the title and exclusive right to all the sand, gravel, mineral and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying the Premises, or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right thereto, without, however, the right to use or penetrate the surface of, or to enter upon, the Premises to extricate or remove the same.

14. **DISPOSSESSION**

Lessor enters this Lease without, and expressly disclaims, any representation or warranty that the Lease is consistent with the documents or rights under which it owns or claims the right to lease the Premises. Lessee accepts this Lease knowing that others may assert that Lessor has no right to lease the rights hereby given.

If Lessee is lawfully deprived of the possession of all or any part of the Premises by a party other than Lessor, Lessor may, upon receipt of notice

from Lessee setting forth the circumstances, either install Lessee in possession of the Premises or terminate this Lease and refund to Lessee the pro rata amount of any prepaid rent for the unexpired term of this Lease or any extensions thereto, after receipt of such notice. Lessor shall not be liable to Lessee for any loss, damage or claims resulting from such deprivation of possession.

15. **PRIOR APPROVAL OF WORK**

Lessee shall not construct, reconstruct or alter structures of any character, new or existing, upon or beneath the Premises without the prior written consent of Lessor. Lessee shall not commence any repairs (except emergency repairs) until after five days' advance written notice to Lessor, which consent shall not be unreasonably withheld.

Any construction, reconstruction or altering of structures consented to by Lessor shall, at Lessee's expense, be installed, constructed and maintained in accordance with applicable building and other codes, in a good and workmanlike manner to the satisfaction of Lessor, and in accordance with all requirements of all departments, boards, bureaus, officials and authorities having jurisdiction in the matter. All necessary permits for such construction (including any permits required to cross public streets) shall be obtained by Lessee at Lessee's sole expense.

For all subterranean improvements installed or constructed by Lessee on the Premises, Lessee shall install and maintain monuments and markers at such locations and intervals, and in form and size satisfactory to Lessor, warning of Lessee's improvements (and any unmonumented or unmarked facilities of other discovered by Lessee during construction) at Lessee's sole cost and expense. Monuments and markers indicating Lessee's improvements shall be promptly relocated or removed upon written request of Lessor at no expense to Lessor. If Lessee shall fail to relocate or remove any such monument within two (2) weeks of such written request, Lessor shall have the right to remove or relocate the same at Lessee's sole cost and expense which Lessee agrees to pay on demand. Lessee agrees that all work upon or in connection with improvements shall be done at such times and in such manner as not to interfere in any way whatsoever with Lessor's operations or the facilities or operations of any other party holding a prior right or rights to the Premises.

16. **EXTENSION OF ELECTRICAL WIRES**

Lessee shall not install or extend any electrical wires in or to any Lessor-owned improvements on the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

17. **LOAD RESTRICTION**

It shall be Lessee's obligation to limit its operations to the weight-sustaining capability of the floor of Lessor's improvement(s).

18. **LIENS**

Lessee shall not commence any repairs (except emergency repairs), changes or alterations on or to the Premises until fifteen (15) days after Lessor has received notice from Lessee stating the date the installation of the alterations is to commence. Lessor shall have the right to enter the Premises to post notices of nonresponsibility.

Lessee shall not permit any mechanics' or materialmen's liens or other liens to be filed against the Premises nor against Lessee's leasehold interest therein by reason of labor or materials furnished to the Premises at Lessee's instance or request. If any such liens are filed against the Premises, Lessee shall cause the same to be discharged of record, either by payment of the claim or by posting and recording the bond contemplated by California Civil Code Section 3143, within twenty (20) days after demand by Lessor. Lessee shall release, hold harmless, defend (with counsel satisfactory to Lessor), and indemnify Lessor from and against any such liens.

19. **REPAIRS AND MAINTENANCE**

- A. The parties hereto have conducted a joint survey of the Premises prior to the Effective Date of this Lease to determine the condition of, on and under the Premises. Lessor has agreed to make certain repairs/alterations/additions to the Premises which are set forth on Exhibit "E" attached hereto and made a part hereof. Other than as set forth as Exhibit "E", Lessee agrees that Lessor shall be under no obligation to rebuild, replace and maintain or make any repairs to the Premises during the lease term, except as otherwise provided in Section 20 of this lease.
- B. Lessee has inspected the Premises and agrees to accept them in their present condition other than the items set forth on Exhibit "E" which Lessor has agreed to complete at Lessor's sole cost and expense. Lessee agrees during the term of this Lease, at its own cost and expense, to keep and maintain the Premises in like order and repair as the Premises were on the Effective Date of this Lease, ~~allowance being made for~~ ordinary wear and tear and damage by fire, or by earthquake or the elements, act of god, or other casualty beyond Lessee's control excepted. *W.A.S. N.O.*
- C. Title to all improvements and additions constructed or erected upon the Premises by Lessee shall become and remain the property of Lessee. At the termination of this Lease, Lessee may elect to remove such improvements and additions, or, with the written approval of Lessor,

leave such improvements or additions as part of the Premises. Any damage caused the Premises by the removal of such additions or improvements shall be repaired by Lessee at Lessee's expense.

20. **DAMAGE OR DESTRUCTION**

- A. In the event that all or any portion of the Premises is damaged or destroyed by fire, the elements or other casualty, Lessor may, at its sole discretion, elect to restore the Premises to a condition consistent with the condition prior to the casualty; Lessor shall advise Lessee in writing within thirty (30) days of the casualty as to whether Lessor elects to restore.

If Lessor elects not to restore, Lessee may, at its option, elect to terminate this Lease upon written notice to Lessor, which notice shall be given within thirty (30) days of receipt of Lessor's notice of Lessor's election; or Lessee may elect to continue the Lease upon the same terms and conditions except that Lessee shall receive a pro-rata abatement of rent for any portion of the Premises no longer usable by Lessee for its operations as a result of the casualty.

- B. In the event of any damage or destruction of the Premises or a portion thereof, the rent payable to Lessor shall be abated in the same proportion that the unusable portion of the premises bears to the whole like part thereof for the period from the occurrence of the damage or casualty to the completion of the repairs or termination as provided for herein.
- C. If Lessor does elect to restore and does not complete such restoration within a reasonable time period, Lessee may terminate this Lease upon thirty (30) days written notice. In the event this Lease is so terminated, the rent payable for the last month shall be pro-rated for the portion of a month until the date of termination.

21. **USE OF COMMON AREAS**

Where the Premises are a portion of a larger building or structure, Lessee is hereby granted a nonexclusive right to use common areas within the building such as lobbies, hallways, and parking areas. Such areas shall not be considered part of the Premises for the purpose of this Lease except where such areas are designated as the part of the Premises under the Basic Lease Terms.

22. **BARRICADES** - Deleted

23. **UTILITY SERVICES**

Lessee shall pay for all light, heat, water, gas or other utility services required by it in connection with its use of the Premises; Lessee, before taking possession of the Premises, shall review the existing utility

service available at the Premises to determine if it is adequate for its needs.

24. **SURRENDER OF PREMISES**

Upon the expiration or termination of this Lease, Lessee, without further notice, shall deliver up to Lessor possession of the Premises. Lessee, if not in default hereunder, shall at any time prior to such expiration or termination, remove from the Premises any personal property owned or controlled by Lessee. Lessee shall, restore the Premises to the condition in which they existed at the time Lessee took possession, ordinary wear and tear excepted. Upon the failure or refusal of Lessee to so remove from the Premises such personal property owned by Lessee, Lessor may remove from the Premises Lessee's personal property and promptly restore the Premises to substantially the same condition in which they existed at the time Lessee took possession, ordinary wear and tear excepted, in which case, Lessee shall pay Lessor within thirty (30) days after demand therefor (a) an amount equal to the rent (as in effect immediately before termination) for the period during which such removal is accomplished to compensate Lessor for the loss of rent (but only for such portion of the premises from which Lessee does not remove its personal property) to Lessor resulting from the unavailability of the Premises for leasing to another tenant during such time and (b) the cost of removal of Lessee's personal property and restoration of the Premises.

In the event of such failure or refusal of Lessee to surrender possession of the Premises, Lessor shall have the right to reenter the Premises and remove therefrom Lessee or any other person, firm, or corporation claiming by, through, or under Lessee.

25. **LENDER'S AGREEMENT**

Any assignment of Lessee's leasehold interest hereunder to Lender as security for a loan shall be subject to Lessor's prior approval which approval shall not be unreasonably withheld. If Lessor approves the assignment, Lessor, Lessee, and Lender shall enter into Lessor's standard Lender's Agreement in substantially the same form attached hereto as Exhibit "A" and made a part hereof.

26. **BANKRUPTCY**

Lessor shall also have the right to terminate this Lease by written notice and to take exclusive possession of the Premises in the event (a) Lessee is adjudged a bankrupt, (b) Lessee becomes insolvent, (c) any action or proceeding for debtor relief of Lessee is commenced by Lessee, or (d) Lessee seeks general debtor relief by extrajudicial means.

27. **DEFENSE**

Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Lessor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless Lessor. Lessee shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this provision, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by any statute or ordinance, state or federal.

Upon written notice from Lessee, Lessor agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Lessee by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Lease for which Lessor has an obligation to assume liability for and/or save and hold harmless Lessee. Lessor shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this provision, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by any statute or ordinance, state or federal.

28. **NOTICES**

All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States mail, registered or certified, postage prepaid, and addressed to the party to whom the notice is directed at the address set forth in the Basic Lease Terms. Payments to Lessor shall be made at the address for payments set forth in the Basic Lease Terms. Either party may change the address for notices or Lessor may change the address for payments by giving the other party notice to that effect.

29. **ATTORNEYS' FEES**

If either party brings any action against the other to enforce or collect any sum due under this Lease or if Lessor brings an action for unlawful detainer of the Premises, the losing party shall pay the reasonable attorneys' fees of the prevailing party in addition to the judgment and court costs.

30. **CURE OF DEFAULT**

In the event Lessee shall not promptly correct any default by Lessee hereunder within thirty (30) days (10 days for monetary defaults) after receipt of notice of such default from Lessor, or if Lessee abandons or vacates the Premises, Lessor shall have the right to terminate this Lease forthwith and to retake possession of the Premises. Waiver of any default shall not be construed as a waiver of a subsequent or continuing default.

31. **NON-WAIVER**

Lessor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or provision. Acceptance of rent or any other sum shall not be a waiver of any preceding breach by Lessee of any provision hereof, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent or any other sum from Lessee, nor shall such acceptance be construed as a waiver by Lessor of its right to terminate hereunder.

32. **ASSIGNMENT AND SUBLETTING**

All the covenants and provisions of this Lease shall be binding upon the successors, heirs, legal representatives and assigns of Lessee to the same extent and effect as the same are binding upon Lessee, and each and every covenant herein shall inure in favor of and run to the successors and assigns of Lessor and to each and every person, firm or corporation which may hereafter own or be in possession of or operate the Premises of Lessor to the same extent and as fully as though such person, firm or corporation were specifically named in this Lease in the place and stead of Lessor; provided, however, no assignment of this Lease nor any subletting of the Premises (except as may otherwise be provided elsewhere in this Lease), in whole or in part, by Lessee, its successors, heirs, legal representatives or assigns, or any subsequent assignee, shall be binding upon Lessor without the written consent of Lessor in each instance, which consent shall not be unreasonably withheld.

All the covenants and provisions of this Lease shall be binding upon the successors, heirs, legal representatives and assigns of Lessor to the same extent and effect as the same are binding upon Lessor, and each and every covenant herein shall inure in favor of and run to the successors and assigns of Lessee.

33. **EMINENT DOMAIN**

In the event of the taking or condemnation of all or any part of the Premises (including conveyance by deed in lieu of, or in settlement of, condemnation proceedings), Lessee shall receive compensation only for any business loss Lessee might suffer as a result of such taking; the remaining award balance and interest thereon, as well as the award for the land value and interest thereon, shall belong to Lessor. Under no

circumstances shall Lessee be entitled to any "bonus value" for the remaining unexpired Lease Term.

In the event that a material portion of the Premises is taken by condemnation, Lessee may terminate this Lease upon ninety (90) days written notice after the effective date of the "taking". In the event Lessee elects to continue the Lease on the portion not taken, Lessee shall receive a pro-rata reduction in rent.

Lessee acknowledges that the Premises comprise a portion of a larger property owned by lessor; in the event of a substantial taking of all or a portion of the larger property, Lessor, may at its sole discretion, elect to terminate this Lease upon Ninety (90) days written notice.

34. **HOLDOVER**

In case Lessee holds over the Lease Term with the consent of Lessor, such holding over shall be deemed a tenancy only from month to month but shall be subject to all applicable terms hereof, or as may then be modified in writing by the parties hereto, including Lessor's right to revise the rent.

Should this Lease be held over on a month-to-month tenancy basis, Lessor, without prior notice to Lessee, shall revise the rent then in effect based on the "CPI Factor," which is defined herein as that percentage of adjustment or fluctuation to the nearest one-tenth of one percent established during the twelve-month period immediately preceding the date the revised rent is to commence, as stated in the Consumer Price Index, Urban Wage Earners and Clerical Workers, U. S. City Average, All Items (1982-84-100), published by the United States Department of Labor, Bureau of Labor Statistics, or any successor or substitute index published as a replacement for that Index by said Department or by any other United States governmental agency. Such rent shall be automatically revised on the date immediately following the expiration date of the Lease Term, and on the same date each year thereafter while this Lease is in effect, unless the rent is subsequently increased for any reason during the twelve-month period immediately preceding the anniversary date for the last CPI-based revision, in which case the next CPI-based revision may be deferred to the next anniversary date where no intervening rental increase occurred within said twelve-month period. If, for any reason, the rent is not revised at such time as herein specified, the rent shall continue to be subject to revision by Lessor without prior notice to Lessee and, when so revised, shall be retroactive to the date the revised rent should have become effective.

Nothing in this section shall be construed as extending the Lease Term or as waiving in any way Lessor's statutory right to terminate at any time during such holdover period.

35. **LEGAL DESCRIPTION**

This Lease shall be supplemented to include a legal description of the Premises if required by either party in writing. If requested by Lessee, then Lessee shall pay to Lessor therefor the sum of \$350.

Any expense incurred by Lessor for surveying the Premises for the purpose of obtaining a legal description shall be paid to Lessor by Lessee promptly upon receipt of bill therefor.

Notwithstanding anything contained in this Section 35 Lessor shall provide to Lessee, free of charge, a drawing, map or similar document marking out the specific area(s) and space which are the Premises as defined in this Lease. (See Exhibits "A" and "A1" attached hereto and made a part hereof).

36. **RECORDATION OF LEASE**

Neither party hereto shall record this Lease without the prior written consent of the other; however, upon request of either party, the other party shall join in the execution of a memorandum or short form of lease for recording purposes. The memorandum or short form of lease shall incorporate this Lease by reference and shall describe the parties hereto, the Premises, and the Lease Term.

Should Lessee request Lessor to prepare said memorandum or short form of lease for recording purposes, Lessee shall pay to Lessor the sum of \$350.

37. **RENTAL ARBITRATION**

In the event the parties are unable to agree upon any rental adjustment hereunder, then, upon thirty (30) days' advance written notice by lessor to Lessee, the matter shall be submitted to and decided by a board of three (3) arbitrators--one to be appointed by Lessor, one by Lessee, and a third by the two so appointed. Should Lessee fail or refuse to appoint an arbitrator within thirty (30) days after delivery of notice from Lessor, then the rent established by Lessor shall be deemed accepted by Lessee. In the event the two arbitrators chosen by the parties are unable to agree upon the third arbitrator, such arbitrator shall be appointed by a judge of any court having jurisdiction over the Premises upon application of either Lessor or Lessee to said court, but such application shall not be made until such party shall have given twenty (20) days' advance notice in writing to the other of its intention so to do. The arbitrators, as soon as possible after their selection, shall meet to hear and decide the questions submitted to them and shall, within a reasonable period of time, give to each of the parties hereto notice of the time and place of such meeting. The hearing of the board of arbitrators shall be conducted in a lawful manner. The written decision of the board, signed by a majority of the arbitrators, shall determine the matter and such determination shall be final and conclusive upon the parties hereto; and,

upon decision of the arbitrators, the rental payment shall be retroactive to its increase date determined under Section 6 hereof. The fees and expenses of arbitration shall be borne as the parties may agree prior to arbitration, or, in case of disagreement, shall be apportioned by the board of arbitrators.

38. **GENERAL ARBITRATION**

If any controversy shall arise between the parties hereto with respect to any matters (other than rent) set forth in this Lease and such dispute shall not be resolved by the parties within thirty (30) days after either of the parties shall notify the other of its desire to arbitrate the dispute, then the matter shall be settled by arbitration in accordance with the provisions of Part 3, Title 9, of the Code of Civil Procedures of California, including the provisions of Section 1283.05 thereof, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. Arbitration shall be by a panel of three (3) arbitrators, one of whom must be an attorney-at-law actively engaged in the practice of his or her profession for at least ten (10) years. One (1) arbitrator shall be chosen by each party and the third arbitrator selected by the two (2) so chosen. The arbitrators shall have no power to modify any of the provisions hereof and their jurisdiction is limited accordingly. Each party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the decision of the arbitration panel. No change in the rules of arbitration which would deprive a party of the right to be represented by counsel, to present evidence, or to cross-examine witnesses presented by the other party shall be effective in any arbitration proceeding arising out of this Lease.

39. **TIME OF ESSENCE**

Time is of the essence of each provision of this Lease.

40. **TERMINATION OF LEASE**

Termination or expiration of this Lease shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration, or thereafter in case by the terms of this Lease it is provided that certain things shall or may have to be done after termination or expiration hereof.

41. **SEVERABILITY**

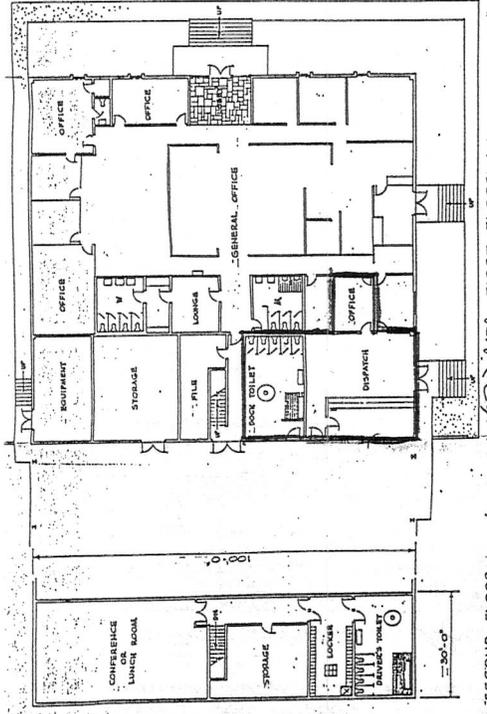
If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

42. **RELATIONSHIP OF PARTIES**

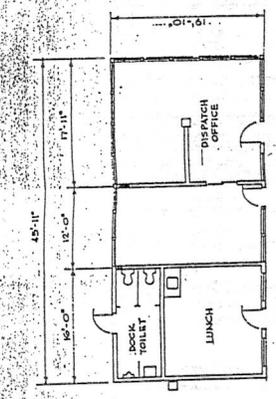
Nothing contained in this Lease shall be deemed or construed by the parties or by any third person or court to create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee, and neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties shall be deemed to create any relationship between Lessor and Lessee, other than the relationship of owner of real property and holder of a limited lease to use the same for the purposes set forth herein.

43. **ENTIRE AGREEMENT AND AMENDMENT**

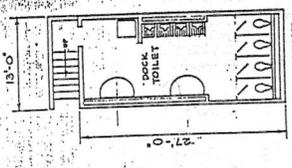
This Lease sets forth the entire agreement between the parties with respect to the leasing of the Premises and supersedes all prior agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This agreement shall not be modified except by written agreement of the parties.



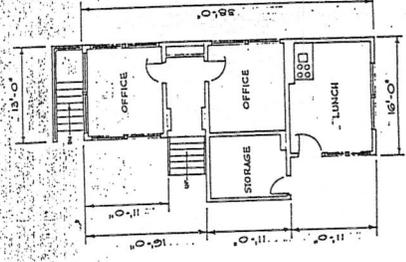
SECOND FLOOR
 (B) AREA FIRST FLOOR
 SCALE: 1/8" = 1'-0"



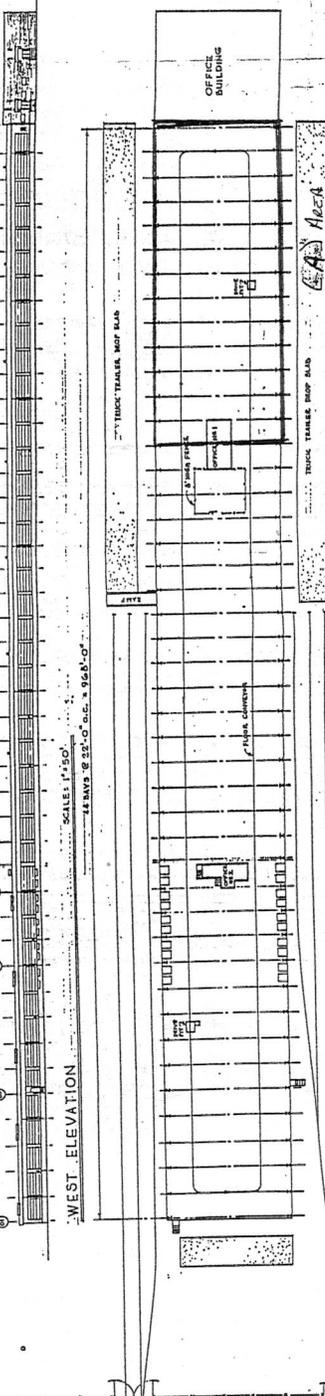
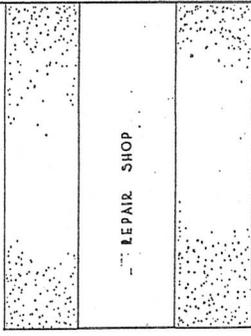
DOCK OFFICE NO. 1
 SCALE: 1/8" = 1'-0"



BASEMENT
 DOCK LEVEL
 SCALE: 1/8" = 1'-0"



DOCK OFFICE NO. 2
 SCALE: 1/8" = 1'-0"



WEST ELEVATION
 SCALE: 1" = 50'
 FENCE LINE
 TRUCK TRAILER HOOP BAYS
 OFFICE BUILDING
 REPAIR SHOP
 SCALE: 1" = 50'

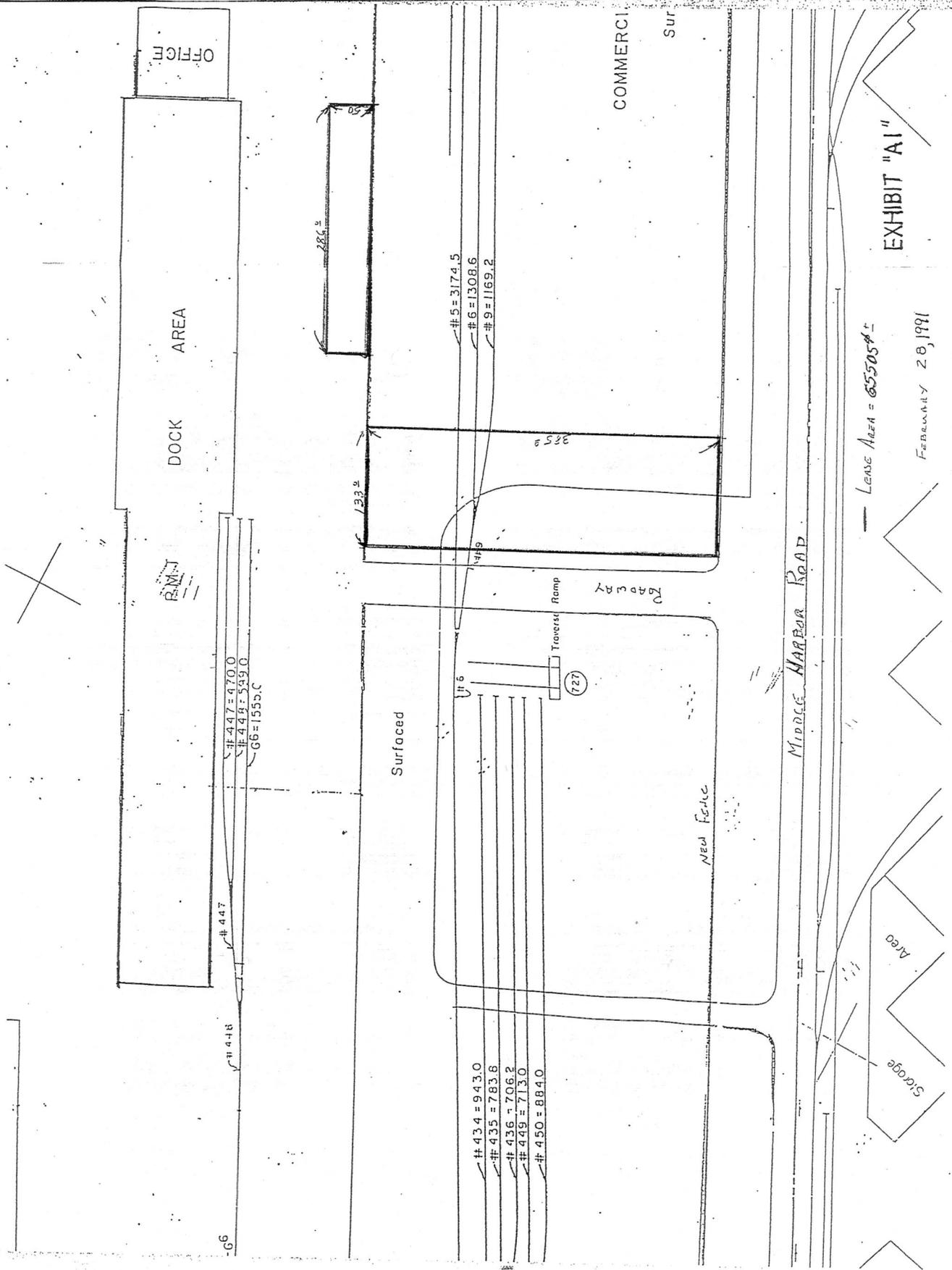
EXHIBIT "A"

REVISIONS	DATE	DESCRIPTION

SOUTHERN PACIFIC
 TRANSPORTATION CO.
 GENERAL ENGINEERING OFFICE
 SAN FRANCISCO, CALIFORNIA
 PKT FREIGHT TERMINAL
 MIDDLE HARBOR ROAD
 OAKLAND, CALIFORNIA
 PLANS AND ELEVATIONS
 DRAWN BY
 CHECKED BY
 DATE APRIL 26, 1979
 CE DRAWING NO.
 23976
 RECORD SHEET

Building Lease Area 29,000 SF +
 ATB Areas

SITE AND FLOOR PLANS
 SCALE: 1" = 50'



LEASE AREA = 65505^{sq} ft
 FEBRUARY 28, 1991

EXHIBIT "A1"

EXHIBIT B

GENERAL INSURANCE REQUIREMENTS ("GIR")

Company shall be furnished evidence of insurance in connection with the foregoing Agreement. Such insurance shall be written by an insurance company having a Best's rating of B + 13 or better and licensed to do business in the state where the Premises are located, meeting the requirements stated below in form satisfactory to Company, for each of the following types of insurance in amounts not less than the amounts herein specified.

The terms "Agreement" as herein used shall refer to the Lease, License, or Permit, including supplemental agreements thereto, to which this Exhibit B is attached and made a part of; "Company" shall refer to the Lessor, Licensor, or Permitter named in the Agreement; "Lessee," "Licensee," or "Permittee" shall refer to the Lessee, Licensor, or Permittee, (whichever is applicable), named in the Agreement; and "Premises" shall refer to the property described in the Agreement and as shown on the attached print.

Liability Insurance Requirements

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE OR COMMERCIAL GENERAL LIABILITY INSURANCE ON AN OCCURRENCE BASIS shall have a combined single limit of not less than \$2,000,000 per occurrence and shall provide for the following:
 - a) Such insurance is primary, without right of contribution from other insurance which may be in effect.
 - b) Such insurance shall not be invalidated by the acts or omissions of other insureds.
 - c) Such insurance shall not be materially modifiable or cancellable without thirty (30) days' prior written notice to Company (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Company). This provision is referred to below as "Notice of Modification or Cancellation."
 - d) Company shall be named as additional insured.
 - e) Contractual liability with deletion of the exclusion for operations within fifty (50) feet of railroad track and deletion of the exclusion of explosion, collapse, or underground hazard, if applicable. (NOTE: For any license or permit involving property within fifty (50) feet of track, the exclusion for operations within fifty (50) feet of track will apply unless eliminated by endorsement).
 - f) Premises, products/completed operations, and personal injury coverage.
 - g) Severability-of-interest clause.

- h) In the case of commercial general liability insurance, the policy must also provide for aggregate coverage at each location and for reinstatement of the aggregate in the event the limits of the policy are exhausted.
 - i) If the proposed use of the Premises involves a hazard which poses particular risk to the environment, the policy must cover sudden and accidental pollution on a named-peril basis to address the hazard.
2. COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE shall have a combined single limit of not less than \$2,000,000 per occurrence and shall provide for the following:
- a) Such insurance is primary, without right of contribution from other insurance which may be in effect.
 - b) Such insurance shall not be invalidated by the acts or omissions of other insureds.
 - c) Notice of Modification or Cancellation.
 - d) Severability-of-interest clause.
3. WORKERS' COMPENSATION INSURANCE shall have limits not less than those required by statute, shall cover all persons employed by Lessee, Licensee, or Permittee, as the case may be, in the conduct of its operations on the Premises and shall provide for the following:
- a) Waiver of subrogation against Company.
 - b) Notice of Modification or Cancellation
 - c) All states endorsements.
 - d) Coverage for Longshore and Harbor Workers Act, if applicable.
4. EMPLOYERS' LIABILITY INSURANCE shall have a limit of not less than \$1,000,000 and shall be endorsed to provide for (a) Notice of Modification or Cancellation and (b) waiver of subrogation against Company.
5. UMBRELLA OR EXCESS LIABILITY INSURANCE shall provide that if the underlying aggregate is exhausted, the excess coverage shall drop down as primary insurance, and shall provide for Notice of Modification or Cancellation.

If the Premises are located in the State of California, either a properly completed certificate of insurance to which has been attached Company's standard form of endorsement (a copy of which is attached hereto as Exhibit C) executed by an authorized representative of the insurer or insurers or a certified copy of the policy or policies shall be satisfactory evidence of the liability insurance required hereunder.

If the Premises are located in another state, a properly completed certificate of insurance shall be furnished to Company for approval. Attachment of Company's standard form of endorsement indicated above will not be required.

EXHIBIT C

COMPREHENSIVE GENERAL AND AUTOMOBILE LIABILITY ENDORSEMENT

Attached to certificate of insurance for and hereby certified to be a part of the following policy or policies having the following expiration dates:

<u>Policy No.</u>	<u>Company Providing Policy</u>	<u>Expiration Date</u>
-------------------	---------------------------------	------------------------

The scope of the insurance afforded by the policy designated in the attached certificate is not less than that which is afforded by the Insurance Service Organization. (The term "policy" as used herein includes the plural number if there is more than one policy listed above.)

Such policy provides or is hereby amended to provide that:

1. The named insured is MITSUI O.S.K. LINES LTD ("Named Insured").
2. SOUTHERN PACIFIC TRANSPORTATION COMPANY ("Lessor") is hereby included as additional insured with respect to liability arising out of the ownership, maintenance or use of the Premises by the Named Insured under or in connection with that certain lease ("Lease") dated _____, between SOUTHERN PACIFIC TRANSPORTATION COMPANY and MITSUI O.S.K. LINES LTD relating to property located at or near the city of Oakland, County of Alameda, State of California.

The insurance provided hereunder applies as though separate policies are in effect for both the Named Insured and Lessor, but does not increase the limits of liability set forth in said policy.

3. The limits of liability under the policy is not less than those shown on the certificate to which this endorsement is attached.
4. Cancellation or material reduction of insurance coverage hereunder is not effective until thirty (30) days [ten (10) days in the case of cancellation for nonpayment of premium] following written notice to Lessor at:

San Francisco Regional Office - Real Estate
One Market Plaza, Suite 912
San Francisco, CA 94105

5. The policy includes contractual liability coverage for liability assumed by the Named Insured under the Lease.
6. The insurer is not entitled to any contribution from insurance in effect for Lessor.
7. The insurance is not invalidated by the acts or omissions of other insureds.
8. The insurance has Broad Form Property Damage endorsement.
9. The insurance has Products/Completed Operations endorsement.
10. The insurance has Personal Injury endorsement.
11. All policy or endorsement limitations relating specifically to operations on or near Lessor's property or tracks are eliminated.
12. In the event of reduction or exhaustion of the applicable aggregate limit or limits of liability under the primary policy referred to in the attached certificate of insurance solely by reason of losses paid thereunder on account of occurrences during the policy period, the excess policy, if any, referred to herein, shall (1) in the event of reduction, apply as excess of the reduced limit of liability thereunder; and (2) in the event of exhaustion, continue in force as though it were primary insurance.

Insurance Company

Date: _____, 19____

By: _____
Signature of
Authorized Representative

EXHIBIT "D"

USE OF HAZARDOUS MATERIALS

1. USE

In addition to the provisions set forth in Section 2 of the Lease, the following terms and conditions shall apply to Lessee's use of the Premises.

- 1.1 **Permitted Hazardous Materials.** Lessee shall be permitted to use and store in, and transport to and from, the Premises the Hazardous Materials identified on Attachment 1 hereto and by this reference incorporated herein (the "Permitted Hazardous Materials") so long as: (a) each of the Permitted Hazardous Materials is used or stored in, or transported to and from, the Premises only to the extent necessary for Lessee's operation of its business at the Premises; (b) at no time shall any Permitted Hazardous Material be on, under or about the Premises in excess of the quantity specified therefor in Attachment 1; and (c) the conditions set forth in 1.3 through 1.9 are strictly complied with. Attachment 1 may be amended from time to time by Lessee.
- 1.2 Lessee acknowledges that Attachment 1 contains only a generalized list and once Lessee has been operating for thirty (30) days at the Premises, Lessee will furnish Lessor with copies of all Material Safety Data Sheets for shipments and will continue to furnish same to Lessor on a monthly basis thereafter.
- 1.3 Lessee shall, at its own expense procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Lessee's use of the Premises, including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer system serving the Premises. Except as discharged into the sanitary sewer system in strict accordance and conformity with all Environmental Laws and this Lease, Lessee shall cause any and all Hazardous Materials removed from the Premises to be removed and transported solely by duly licensed handlers to duly licensed facilities for final disposal of such materials and wastes.

Notwithstanding the previous paragraph, Lessee shall have no obligation nor be responsible for any condition of, in, on, under or about the Premises which exists as of the Effective Date of this lease, nor for the cost or expense to comply with any condition of any permit, license

or other governmental or regulatory approval required for Lessee's use of the Premises relating to the pre-existing condition of the Premises, and where such costs or expenses may be necessitated Lessee shall have the right to terminate this lease at its sole discretion and without liability for such costs or expenses.

Lessee agrees to provide Lessor with: (a) a copy of any hazardous material management plan or similar document required by any federal, state or local governmental or regulatory authority to be submitted by Lessee; (b) copies of all permits, licenses and other governmental and regulatory approvals with respect to the use of Hazardous Materials; (c) copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises; and (d) copies of all reports, studies and written results of tests or inspections concerning the Premises with respect to Hazardous Materials, including, without limitation, the "Plans" hereinafter defined (collectively "Documents"). Lessee shall deliver all Documents to Lessor promptly following the earlier of (i) Lessee's submission of such Documents to the requesting governmental agency, or (ii) Lessee's receipt of such Documents (Lessee hereby agreeing that it shall exercise diligent efforts to expeditiously obtain copies of any such Documents known by Lessee to exist).

1.4 **Routine Monitoring and Delivery of Plans.** Upon commencing any activity involving Hazardous Materials on the Premises, and continuing thereafter throughout the term of this Lease, Lessee shall initiate and maintain the following systems to ensure the routine monitoring of the levels of Hazardous Materials which may be present on, under or about the Premises or properties adjoining or in the vicinity of the Premises as the result of the activities of Lessee or Lessee's Agents and to ensure continued compliance with the procedures and regulations concerning the handling, storage, use and disposal of Hazardous Materials set forth in the following (collectively, "Plans"): (a) each permit, license or other governmental or regulatory approval with respect to the use of Hazardous Materials, (b) each Hazardous Materials management plan or similar document required by any federal, state, or local governmental or regulatory entity, (c) each plan for handling and disposing of hazardous Materials necessary to comply with Environmental Laws prepared by or on behalf of Lessee or Lessee's Agents (whether or not required to be submitted to a governmental agency).

1.4.1 **Monitoring Reports.** Not less often than once each calendar quarter during the term of this Lease, Lessee shall provide Lessor with a written report which shall set forth the results of the monitoring of Hazardous Materials during the previous calendar quarter. Lessor may elect (but shall not be obligated) to retain an independent consultant experienced in the use and management of Hazardous Materials for the purpose of reviewing

any information received by Lessor in connection with Hazardous Materials. Pursuant to such review, Lessor's consultant may make recommendations in connection with Lessee's control of Hazardous Materials on the Premises. Lessor's failure to appoint any consultant shall not relieve Lessee of any of Lessee's obligations under this Lease relating to Hazardous Materials nor constitute a waiver of Lessor's rights under this Lease.

- 1.4.2 **Lessor's Right to Install Testing Wells.** Lessor may install permanent or other testing wells or devices at or about the Premises, and may cause the ground water to be tested to detect the presence of Hazardous Materials at least once every twelve (12) months during the term of this Lease by the use of such wells or devices as are then customarily used for such purposes. If Lessee so requests in writing, Lessor shall supply Lessee with a copy of any such test results. The installation of such wells or other device shall be at Lessor's sole cost and expense and shall not interfere with Lessee's use of the Premises.

Lessor shall inform Lessee at least 30 calendar days in advance of the commencement of any such installation work and if any disagreement or controversy arises between the Lessor and Lessee with regard to such installation, the disagreement or controversy, if it cannot be resolved by the parties, shall be subject to the provisions of Section 38 of this Lease.

- 1.4.3 **Lessor's Right to Inspect.** Lessor and its representative shall have the right, upon five (5) days' written notice, to enter the Premises and to: (i) conduct any testing, monitoring and analysis for Hazardous Materials; (ii) review any documents, materials, inventory, financial data or notices or correspondence to or from private parties or governmental or regulatory authorities in connection therewith; and (iii) review all storage, use, transportation and disposal facilities and procedures associated with the storage, use, transportation and disposal of Hazardous Materials (collectively, "Inspection").

- 1.5 **Notice to Lessor.** Each party shall give prompt written notice to the other of:

- (a) any proceeding or inquiry by, notice from, or order of any governmental authority with respect to the presence of any Hazardous Material on, under or about the Premises or the migration thereof from or to other property;
- (b) all claims made or threatened by any third party against Lessee or Lessor or the Premises relating to any loss or injury resulting from any Hazardous Materials;

- (c) any spill, release, discharge or non-routine disposal of Hazardous Materials that occurs with respect to the Premises or operations at the Premises by Lessee or Lessor or Lessor's agents.
 - (d) all matters of which Lessee or Lessor is required to give notice pursuant to any Environmental Laws; and
 - (e) Lessee's or Lessor's discovery of any occurrence or condition on, under or about the Premises or any real property adjoining or in the vicinity of the Premises that could cause the Premises to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Laws.
- 1.6 **Lessor's Right to Participate.** Lessor shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions affecting the Premises initiated in connection with any Environmental Law. In addition, neither Lessee nor Lessor shall take any remedial action in response to the presence of any Hazardous Materials in, under, or about the Premises (except in the case where loss of life or substantial property damage is imminent or immediate action is required by any governmental entity, in which event either party shall take immediate remedial action), nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying the other party of its intention to do so and affording the other party ample opportunity to appear, intervene or otherwise appropriately assert and protect its respective interest with respect thereto.
- 1.7 **Lessee's Indemnity.** See Section 8 of General Lease Terms.
- 1.8 **Remedial Work.** In the event Lessee shall cause the release of Hazardous Material onto the Premises, it shall notify Lessor and shall commence such work as is necessary to recover the released material and correct any condition of the Premises directly caused by the release. Lessee shall not be responsible for correcting any condition of the Premises which existed before the release of such Hazardous Material.
- 1.9 **Definitions.** For purposes of this Exhibit "D", the following definitions shall apply:
- 1.9.1 **Hazardous Material.** The term "Hazardous Material(s)" shall include without limitation:
- (a) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic

substances," or "solid waste" under CERCLA (as defined below), RCRA (as defined below), and the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801 et seq., and in the regulations promulgated pursuant to said laws;

- (b) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or designated by the Environmental Protection Agency (or any successor agency) as hazardous substances (see, e.g., 40 CFR Part 302 and amendments thereto);
- (c) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are or become classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (d) Any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to section 311 of the Clean Water Act of 1977, 33 U.S.C. sections 1251 et seq. (33 U.S.C. section 1321) or listed pursuant to section 307 of the Clean Water Act of 1977 (33 U.S.C. section 1317), (v) flammable explosives, or (vi) radioactive materials.

1.9.2 **Environmental Laws.** "Environmental Laws" shall mean any federal, state or local law, statute, ordinance, or regulation now in effect or hereafter enacted pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Premises, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. section 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended, 42 U.S.C. sections 6901 et seq.

2. **SURRENDER**

In addition to Lessee's obligations pursuant to Section 24 of the Lease, Lessee shall, on the expiration or sooner termination of this Lease, surrender the Premises to Lessor free of Hazardous Materials but only those Hazardous Materials which Lessee has released onto the Premises. Lessee has no obligation or responsibility to clean up the Premises from any condition which existed on the Effective Date of the Lease or to restore the Premises to any condition other than to its condition on the Effective Date of this Lease.

GEL/s1

ATTACHMENT 1

PERMITTED HAZARDOUS MATERIALS

Listed below are the classes of hazardous materials handled under the following headings: FREQUENT (regular shipments weekly or biweekly), OCCASIONALLY (monthly or bimonthly), INFREQUENT (once every six months or so) and RARE (maybe once a year).

FREQUENT

FLAMMABLE
CORROSIVE
POISON GAS
FLAM. GAS
NON-FLAM. GAS

OCCASSIONALLY

FLAMMABLE SOLID
DANGEROUS WHEN WET
OXIDIZER

INFREQUENT

ORGANIC PEROXIDE
POISON

RARE

EXPLOSIVE

EXHIBIT E

DOCK/OFFICE AREA

Relamping and reballasting of the overhead warehouse lights.

Repair and replacement of cargo bay lightning.

Secured fencing between Mitsui space and neighboring area.

Repairs to one roll-up door.

Window replacement in office.

Repairs to back side roll-up doors to make them secure.

Inspect water system to ensure that it is operational.

Inspect office electrical outlets.

Inspect fire protection system.

Detection and repair of roof leaks.

YARD AREA

Fence repairs to make area secure.

Guardrail removal.