

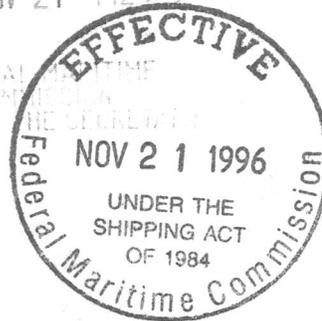
301 201007  
RECEIVED

Document No. 34953

Filed  
SD UNIFIED PORT DISTRICT Clerk's Office

'96 NOV 21 12:29

FEDERAL MARITIME  
COMMISSION  
OFFICE OF THE SECRETARY



SAN DIEGO UNIFIED PORT DISTRICT  
LEASE TO  
PACIFIC COAST CEMENT CORPORATION  
OF PROPERTY LOCATED AT  
TENTH AVENUE MARINE TERMINAL  
SAN DIEGO, CALIFORNIA  
FOR THIRTY (30) YEARS  
COMMENCING OCTOBER 1, 1996  
AND ENDING SEPTEMBER 30, 2026  
INCLUDING OPTIONS TO EXTEND THIS LEASE FOR  
FOUR (4) FIVE- (5) YEAR PERIODS

692160  
TAL/iao

TABLE OF CONTENTS

<u>Paragraph/Exhibit</u>	<u>Page Number</u>
1. TERM . . . . .	1
2. RENTAL . . . . .	2
3. MINIMUM ANNUAL TONNAGE . . . . .	7
4. USE . . . . .	8
5. CONSTRUCTION OF IMPROVEMENTS . . . . .	8
6. IMPROVEMENTS . . . . .	10
7. TITLE TO IMPROVEMENTS . . . . .	11
8. LIENS . . . . .	12
9. LEASE ENCUMBRANCE . . . . .	12
10. ASSIGNMENT - SUBLEASE . . . . .	13
11. DEFAULT . . . . .	15
12. BANKRUPTCY . . . . .	16
13. EMINENT DOMAIN . . . . .	16
14. TERMINATION OF PRIOR AGREEMENT . . . . .	16
15. USE OBLIGATION . . . . .	17
16. MAINTENANCE AND REPAIR . . . . .	17
17. PERFORMANCE BOND . . . . .	18
18. TAXES AND UTILITIES . . . . .	18
19. CONFORMANCE WITH LAWS AND REGULATIONS . . . . .	19
20. NONDISCRIMINATION . . . . .	19
21. PARTIAL INVALIDITY . . . . .	19
22. HOLD HARMLESS . . . . .	19
23. SUCCESSORS IN INTEREST . . . . .	20
24. EASEMENTS . . . . .	20
25. TITLE OF LESSOR . . . . .	20
26. INSURANCE . . . . .	21

27. POLICY OF LESSOR . . . . .	24
28. WARRANTIES-GUARANTEES-COVENANTS . . . . .	24
29. DAMAGE TO OR DESTRUCTION OF PREMISES . . . . .	24
30. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION . . . . .	25
31. PEACEABLE SURRENDER . . . . .	25
32. WAIVER . . . . .	25
33. HOLDOVER . . . . .	25
34. SECTION HEADINGS . . . . .	26
35. ENTIRE UNDERSTANDING . . . . .	26
36. TIME IS OF THE ESSENCE . . . . .	26
37. NOTICES . . . . .	26
38. REMOVAL OF MATERIALS . . . . .	27
39. ACCEPTANCE OF PREMISES . . . . .	27
40. WASTE/NUISANCE . . . . .	27
41. GENDER/SINGULAR/PLURAL . . . . .	27
42. EQUAL EMPLOYMENT OPPORTUNITY . . . . .	28
43. ATTORNEY'S FEES . . . . .	28
44. HAZARDOUS MATERIALS . . . . .	28
45. ABOVEGROUND STORAGE TANKS . . . . .	29
46. UNDERGROUND STORAGE TANKS . . . . .	30
47. TERMINATION . . . . .	31
48. ACKNOWLEDGMENT OF LESSOR'S IMPROVEMENTS . . . . .	32
49. SECURITY DEPOSIT . . . . .	32
50. ABSTRACT OF LEASE . . . . .	34

Exhibit "A"

Exhibit "B"

Exhibit "C"

GUARANTY

LEASE

THIS LEASE, made and entered into this 24<sup>th</sup> day of SEPTEMBER 1996, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and PACIFIC COAST CEMENT CORPORATION, a Delaware corporation, hereinafter called "Lessee," WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 150,929 square feet of tideland area, including 23,720 square feet of paved land for exclusive use; 13,830 square feet of paved land for preferential, but nonexclusive use; 95,479 square feet of interior building area together with 96,955 square feet of roof area; 7,233 square feet of dock area; 2,220 square feet of exclusive use, subsurface utility easement area; 8,447 square feet of joint-use, subsurface utility easement area; together with the preferential, but nonexclusive use of approximately 325 linear feet of rail track No. 3 and Berth No. 10-6 located at Tenth Avenue Marine Terminal, in the City of San Diego, California, more particularly described and delineated on Drawing No. 020-037, dated May 3, 1996, attached hereto as Exhibits "A" and "B" and by this reference made a part hereof.

TO HAVE AND TO HOLD said leased premises for the term of the Lease and upon the conditions as follows:

1. TERM: The term of this Lease shall be for a period of ten (10) years commencing on the 1st day of October, 1996, unless sooner terminated as herein provided; provided, however, that Lessee shall have the option to extend this Lease for four (4) additional, consecutive five- (5) year terms. Each additional five- (5) year term for which this option is exercised shall commence at the expiration of the immediately preceding term, upon the express condition precedent that Lessee imports at Lessor's marine terminal facilities, by waterborne vessel, at least the minimum annual tonnage of cement as required by Paragraph 3 herein, for the initial term of this Lease and any extension thereof, and that notice in writing of an extension for any such term is given to the Executive Director of Lessor at least ninety (90) days before the expiration of the immediately preceding term. Time is of the essence of said ninety- (90) day

notice. Upon timely exercise of said option as provided herein, this Lease shall continue in full force and effect in accordance with the terms, covenants, and conditions thereof, including the adjustment of the minimum annual tonnage requirement and rental as herein provided. In the event Lessee shall fail to satisfy the minimum annual tonnage requirement or fail to give the Executive Director of Lessor written notice of its election to exercise an option for a five- (5) year extension of this Lease in accordance with this Paragraph, the option for said extension and all subsequent extensions shall thereafter be and become null and void and of no further force and effect.

This Lease shall not be effective until filed with the Federal Maritime Commission pursuant to Section 15 of the Shipping Act, 1916, and pursuant to Section 5 of the Shipping Act of 1984. Lessor agrees to file this Lease with the Federal Maritime Commission in accordance with the previous sentence within thirty (30) days following the adoption of an ordinance granting this Lease.

2. RENTAL: Lessee agrees to pay to Lessor rent in accordance with the following schedules and procedures:

- (a) The term of this Lease shall be divided into a series of rental periods, each consisting of one hundred twenty (120) months. The first such period shall begin on the commencement date of this Lease. Each successive rental period shall commence at the expiration of the immediately preceding rental period. The last rental period shall be reduced in term in order to coincide with the expiration of this Lease.
- (b) The rental for the first rental period of this Lease shall be a sum per month of Eleven Thousand Two Hundred Forty Dollars (\$11,240) for Parcel No. 1; One Thousand Six Hundred Ninety-Seven Dollars (\$1,697) per month for Parcel No. 2; One Thousand Forty-Two Dollars (\$1,042) per month for Parcel No. 3, including rent for dock improvements located on Parcel No. 3; Nine Hundred Seventy Dollars (\$970) per month for Parcel No. 4, including paving improvements located on Parcel No. 4; One Thousand One Hundred Eighty-Four Dollars (\$1,184) per month for Parcel No. 5, including paving improvements located on Parcel No. 5; Thirteen Dollars (\$13) per month for Parcel No. 6, including paving improvements located on Parcel No. 6; Ninety-Four Dollars (\$94) per month for Parcel No. 7; and Seventy-Four Dollars (\$74) per month for Parcel No. 8; subject to adjustment as provided below. Said rental sum shall be payable in advance on or before the tenth (10th) day of each month. For each successive rental period of this Lease and any extension thereof the rental shall be a sum agreed upon by Lessor and Lessee. In the event the parties cannot agree to the rent for such successive rental periods, the rental shall be determined pursuant to the provisions of Paragraph 2(c); provided, however, the rent for Parcel No. 1 shall be the amount established for inside space occupancy of two full transit shed sections pursuant to Lessor's then current Tariff. Further provided, however, during the first and each

successive rental period the rents shall be adjusted upward or downward after the expiration of the first sixty (60) months of each rental period (the adjustment date) according to the following computation: "The base figure for computing the adjustment is the arithmetic average of the thirty-six (36) monthly index figures for the fifth (5th) through fortieth (40th) months immediately preceding the existing rental period as shown in the Consumer Price Index for All Urban Consumers for Los Angeles/Anaheim/Riverside, CA/All Items based on the period 1982-84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics. The index figure for the adjustment date is the arithmetic average of the thirty-six (36) monthly index figures of said Consumer Price Index for All Urban Consumers for the fifth (5th) through fortieth (40th) months immediately preceding the adjustment date.

"The index for the adjustment date shall be computed as a percentage of the base figure. For example, assuming the base figure is 110 and the index figure for the adjustment date is 121, the percentage to be applied is  $121/110 = 1.10 = 110\%$ .

"That percentage of the base figure shall be applied to the initial rent in effect at the beginning of the then existing rental period and will continue for the remaining sixty (60) months of the rental period.

"In the event the Consumer Price Index for All Urban Consumers for Los Angeles/Anaheim/Riverside, CA/All Items is no longer published, the index for the adjustment date shall be the one reported in the U. S. Department of Labor's comprehensive official index most nearly answering the foregoing description of the index. If an index is calculated from a base different from the base period 1982-84 = 100, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

"If the above described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

"Notwithstanding the publication dates of the index, the effective date of the rent adjustment is at the expiration of the first sixty (60) months of each rental period. Further, notwithstanding anything to the contrary contained here in this Paragraph 2(b), the rent adjustment shall not exceed seven (7) percent per annum or thirty-five percent (35%) per adjustment, nor shall the rental rate(s) resulting from the rent adjustment exceed the applicable rental

rate(s) most recently adopted by the Board of Port Commissioners at the time of such rent adjustment. Until said rent adjustment can be reasonably determined by index publication, Lessee shall continue to make rental payments pursuant to this Lease at the same rent in effect at the then existing rental period. Because of this provision, overpayment of rents shall be credited to the Lessee's rental account and underpayments of rent shall be immediately paid to the Lessor."

- (c) In the event the parties cannot agree to the rent for a rental period, the controversy as to rent for said period shall be determined by three arbitrators. After notice by either party to the other requesting arbitration, one arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made. The two arbitrators shall immediately choose a third arbitrator to act with them. If they fail to select a third arbitrator, on application by either party, the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity. The party making the application shall give the other party notice of his application. All of the arbitrators shall be qualified real estate appraisers. Each party shall bear the expense of its own appointed arbitrator and shall bear other expenses pursuant to Section 1284.2 of the Code of Civil Procedure of California. Hearings shall be held in the City of San Diego, California. The award shall be the decision of not less than two of the arbitrators. Said award shall be the rent which Lessor would derive from Lessor's property if it was vacant land, without any improvements thereon, and made available on the open market for new leasing purposes at the commencement of the rental period under arbitration. For the purpose of this arbitration procedure, the arbitrators shall assume that the Lessor has a fee simple absolute estate unburdened by any existing lease. In determining what rent Lessor could derive from said property if it were made available on the open market for new leasing purposes, the arbitrators shall consider the benefits and burdens of all the provisions of this Lease to determine whether or not this Lease is more or less restrictive than private sector or other governmental leases; provided, however, no diminution in value shall be taken as a result of any existing Contaminants or improvements, or lack of improvements, on the subject property, and the property shall be considered as if it were available to be leased for industrial uses. Said uses shall not be confined to those permitted Lessee herein nor to Lessee's actual use of the leased premises. In determining the rates, returns, rents and/or percentage rentals for said use and/or uses, the arbitrators shall use and analyze only the market data that is found in the open marketplace, such as is demanded and received by other Lessors for the same or similar uses as those referenced above. In all cases, the award shall be

based upon recognized real estate appraisal principles and methods. The award determined by the arbitrators shall be effective and retroactive to the first day of the rental period under arbitration. The award shall be in writing in the form of a report that is in accordance with the powers of the arbitrators herein, supported by facts and analysis and in accordance with law. The arbitrators shall make copies of their report available to any ethical practice committee of any recognized professional real estate organization. The arbitration shall be conducted under and subject to Sections 1280 through 1294.2 of the Code of Civil Procedure of California.

(d) In addition to the rent required to be paid by Lessee pursuant to Paragraphs 2(a), (b), and (c) above, within twenty (20) days following each twelve- (12) month period of this Lease, Lessee also shall pay to Lessor additional rent as described in this Paragraph 2(d). The first such twelve- (12) month period shall commence on the first day of the term of this Lease, with subsequent twelve- (12) month periods commencing on each anniversary thereafter. Said additional rent shall equal the product of (1) and (2) below:

(1) the difference between the minimum annual tonnage of cement required to be imported by Lessee for the previous twelve- (12) month period pursuant to Paragraph 3 hereof, by waterborne vessel, at Lessor's marine terminal facilities, pursuant to this Lease, and the actual tonnage of cement imported by Lessee, by waterborne vessel, at Lessor's marine terminal facilities during the previous twelve- (12) month period;

(2) the applicable wharfage charge(s) in effect at commencement of the previous twelve- (12) month period pursuant to Lessor's tariff, filed with the Federal Maritime Commission (Tariff), as presently existing or hereinafter amended at any time and from time to time, at the sole discretion of the Board of Port Commissioners of Lessor, in accordance with law.

Lessee shall render to Lessor, with Lessee's payment of additional rent, in a form prescribed by Lessor, a detailed report of Lessee's cement import activity at Lessor's marine terminal facilities for the previous twelve- (12) month period and the total additional rent computed for that period. Each such report shall be signed by Lessee or its responsible agent under penalty of perjury.

Notwithstanding anything to the contrary contained herein, in the event the actual tonnage of cement imported by Lessee, by waterborne vessel, at Lessor's marine terminal facilities during the previous twelve- (12) month period equals or exceeds Lessee's required minimum annual tonnage

for the same period, Lessee shall not be required to pay additional rent as described in this Paragraph 2(d) for said period. The rental negotiation and arbitration provisions of this Lease shall not be applicable to this additional rent provision.

- (e) Lessee also shall pay Lessor all applicable charges pursuant to the Tariff and any other rates and charges, as presently existing or hereinafter amended or enacted, when incurred by Lessee for Lessee's use of Lessor's marine terminal facilities, machinery, and equipment. The rental negotiation and arbitration provisions of this Lease shall not be applicable to charges assessed pursuant to the Tariff or such other rates and charges.
- (f) In the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rental provisions of this Lease, then the rent not paid when due shall bear interest at the rate of ten percent (10%) per annum from the date due until paid; provided, however, that the Executive Director of Lessor shall have the right to waive for good cause any interest payment upon written application of Lessee for any such delinquency period.
- (g) Rentals shall be delivered to the Treasurer of the San Diego Unified Port District at Post Office Box 488, San Diego, California 92112. The designated place of payment may be changed at any time by Lessor upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss if payments are made by mail.
- (h) Lessee shall be entitled to a credit against amounts payable as rent equal to Lessee's direct costs of removing and replacing certain paving and rail improvements in accordance with Paragraph 5 hereof. The rent credit may be applied by Lessee to the first rental payment(s) due after Lessee has provided to Lessor an itemized statement of the actual cost of the removal and replacement work and after an audit, if conducted, of Lessee's books and records pursuant to Paragraph 5 hereof. The rent credit provided by this Paragraph shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) under any circumstance.
- (i) Notwithstanding the foregoing, in the event that Section 7 of Lessor's Board of Port Commissioners' Policy No. 352, adopted by Resolution No. 92-47 on February 18, 1992, is revised, superseded, or rescinded within twelve (12) months after the commencement date of this Lease, then 2(a) and 2(b) above automatically shall be superseded by an amendment to this Lease to be signed by Lessor and Lessee, which shall reflect any changes to said Section 7 of Lessor's Board of Port Commissioners' Policy No. 352. In the event there is any dispute between Lessor and Lessee regarding the wording

of said amendment, the decision of Lessor's Board of Port Commissioners regarding the wording of said amendment shall be final.

3. MINIMUM ANNUAL TONNAGE: Lessee agrees, for purposes of computing additional rent payable by Lessee, pursuant to Paragraph 2(d) herein, and for purposes of determining if Lessee may exercise options to extend the term of this Lease, pursuant to Paragraph 1 herein, Lessee's required minimum annual tonnage of cement imported by waterborne vessel, at Lessor's marine terminal facilities, for the first five (5) years of this Lease shall be in accordance with the following schedule:

<u>Year</u>	<u>Annual Tonnage</u>
1	85,000 metric tons
2	160,000 metric tons
3	260,000 metric tons
4	300,000 metric tons
5	300,000 metric tons

Lessee's required minimum annual tonnage shall be adjusted upon commencement of the sixth year of the term and each five- (5) year option term of this Lease or further extension of this Lease, if any, to an amount equal to 75% of the average annual tonnage of cement imported by Lessee, by waterborne vessel, at Lessor's marine terminal facilities, during the three- (3) year period which ends six (6) months prior to commencement of the sixth year of the term of this Lease or the extended term, as the case may be, or the required minimum annual tonnage in effect immediately prior to the adjustment, whichever is greater. The effective date of the adjustment shall be the commencement date of the sixth year of the term of this Lease or of the extended term, if any, as the case may be.

Lessee may exercise options to extend the term of this Lease, in accordance with Paragraph 1 herein, only if the average annual tonnage of cement imported by Lessee, by waterborne vessel, at Lessor's marine terminal facilities, during the five- (5) year period which ends six (6) months prior to commencement of each extended term, if any, equals or exceeds the required minimum annual tonnage in effect immediately prior to the subject option term.

It is further agreed that at least eighty percent (80%) of the tonnage of product imported by Lessee at the leased premises shall be by waterborne vessel through Lessor's marine terminal facilities; provided, however, Lessee shall be permitted to import up to one hundred percent (100%) of its product tonnage by rail and truck transport until Lessee completes construction pursuant to Paragraph 5(a) herein, or until February 1, 1998, whichever occurs earlier. Further, provided, in the event Lessee's completion of construction is delayed beyond February 1, 1998, as a result of a delay in Lessor's completion of

improvements to the bulkhead and Berth 10-6 located adjacent to the leased premises, Lessee shall be permitted to import up to one-hundred percent (100%) of its product tonnage by rail and truck transport for an additional period equal to the length of Lessor's delay as alternative performance in the event of such a delay by Lessor. In the event of a dispute between Lessor and Lessee as to the length of Lessor's delay, if any, the decision of the Board of Port Commissioners of Lessor shall be final.

4. USE: Lessee agrees that the leased premises shall be used only and exclusively for the importation, exportation, handling, and storage of bulk cement and cement-related bulk products and for no other purposes whatsoever. It is further agreed that 325 linear feet of rail track No. 3, Parcel Nos. 3 and 6, and Berth 10-6 shall be for Lessee's preferential, but nonexclusive, use. Parcel Nos. 7 and 8 shall be used only for subsurface utility purposes in conjunction with the uses permitted under this Paragraph. Parcel No. 8 being on a joint-use basis with Lessor and other users.

Lessee agrees that its use of Berth 10-6 at the Tenth Avenue Marine Terminal shall be subject to the terms and conditions of Lessor's Tariff. Lessee also agrees to allow ingress and egress at all times by Lessor and/or the public to the transformer vault, fire hydrants, and public rest rooms located within the leased premises. These restrictions on use of the leased premises absolutely prohibit a change in use.

5. CONSTRUCTION OF IMPROVEMENTS:

(a) On or before January 1, 1997, Lessee shall commence the construction and diligently proceed to completion of a Siwertell, bulk cement unloading system (in accordance with the proposal of Lessee entitled "Bulk Cement Unloading Facility," a copy of which is on file in the Office of the Clerk of Lessor as Document No. 30438, which document is by this reference made a part hereof). In addition, Lessee shall be responsible for any necessary removal and replacement of paving and rail lines located outside Lessee's leased premises in the vicinity of the area proposed for the Siwertell installation. Said construction shall be completed by no later than December 31, 1997, except as the completion may be delayed as set forth in Subparagraph (f) hereof. In the event of any inconsistency between the proposal and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail. It is agreed, however, in the event Lessee's commencement is delayed beyond January 1, 1997, or its completion of construction is delayed beyond December 31, 1997 as a result of a delay(s) in Lessor's completion of improvements to the bulkhead and Berth 10-6 located adjacent to the leased premises, the dates for Lessee's commencement and/or completion of construction shall be postponed for a period equal to the length of Lessor's delay(s). Postponement of Lessee's date of commencement and/or completion of

construction is the sole and exclusive remedy for delay in said commencement or completion resulting from Lessor's delay(s) in completion of Lessor's improvements. Lessee shall not be entitled to any legal or equitable remedies or damages at law resulting from Lessor's delay(s) in construction of Lessor's improvements. In the event of a dispute between Lessor and Lessee as to the length of Lessor's delay(s), if any, the decision of the Board of Port Commissioners of Lessor shall be final.

- (b) No construction of any improvement upon the leased premises shall commence without the prior approval of the Executive Director of Lessor, as evidenced in writing, and all such construction shall be in accordance with plans and specifications which must be submitted to and approved by the Executive Director in writing prior to the commencement of any such construction. In addition, in the event it is necessary for Lessee to remove and replace paving or rail lines located outside Lessee's leased premises, Lessee shall obtain at least three (3) competitive bids or cost proposals from qualified contractors and submit said bids or cost proposals to Lessor prior to the award of any construction contract for such work. Lessor shall notify Lessee in writing which bid or cost proposal, if any, is approved by Lessor. Provided such removal and replacement work is completed in accordance with plans and specifications approved in accordance with this Paragraph, Lessee shall be entitled to a credit which may be applied against rent due to Lessor in accordance with Paragraph 2(h) hereof.
- (c) When required by Lessor, Lessee shall pave or plant ground cover, at its own cost and expense, over the entire area of the leased premises not covered by buildings. All paving or ground cover shall be in accordance with plans and specifications approved by the Executive Director in writing prior to the commencement of any such paving or planting.
- (d) Lessee shall, as a condition of this Lease, make an investment for the improvements to be constructed as described in this Paragraph in an amount which shall exceed Six Million Dollars (\$6,000,000). Such investment is qualification for the term of this Lease, and is not a portion of the rental obligations contained in Paragraph 2 of this Lease, and neither such investment or improvements nor any other Lessee investment or improvement shall be considered by the parties or any arbitrator (in the event of arbitration) in determining any rent during the term of this Lease.
- (e) Within sixty (60) days following completion of any substantial improvement or installation within the lease premises, Lessee shall furnish Lessor an itemized statement of the actual construction cost of such improvement or installation. The statement of cost shall be sworn to and signed by Lessee or his responsible agent under penalty of perjury.

Lessee agrees that true, accurate and complete records will be maintained to support the statement of cost. Such records shall include, where applicable, a general ledger, vendor invoiced cancelled checks, construction loan documentation, agreements with third-party contractors and contractor progress payment billings. Additionally, when a Lessee performs the construction/installation of improvements in-house, the Lessee will substantiate the actual work performed by maintaining a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates.

Books of account and records hereinabove required to be maintained shall be kept or made available at such location as is agreeable to Lessor, and Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof and of the statement of cost. In the event the Lessee does not make available the original records and books of account at the leased premises or within the limits of San Diego County, Lessee agrees to pay all necessary expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

- (f) The time during which Lessee is delayed by acts of God, war, invasion, rebellion, revolution, insurrection, riots, labor problems, unavailability of materials, government intervention, or acts or omissions of the Lessor, shall be added to the times for the commencement of construction and completion of construction of improvements as referred to in this Lease; provided, that in no event shall the period of excused delay exceed 365 days in the aggregate.

#### 6. IMPROVEMENTS:

- (a) Lessee may, at its own expense, make any alterations or changes in the leased premises or cause to be built, made or installed thereon any structures, machines, appliances, utilities, signs or other improvements necessary or desirable for the use of said premises and may alter and repair any such structures, machines or other improvements; provided, however, that no alterations and changes shall be made and no structures, machines, appliances, utilities, signs or other improvements shall be made, built or installed, and no major repairs thereto shall be made except in accordance with plans and specifications previously submitted to and approved in writing by the Executive Director of Lessor. Notwithstanding the foregoing, Lessee shall have the right within the interior of any enclosed building structure to install and/or remove

machines, equipment, appliances and trade fixtures to/from the leased premises without the prior consent of the Executive Director of Lessor.

Lessee further agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to be flown, installed, placed, or erected on the premises without written consent of the Executive Director of Lessor.

- (b) Lessee shall notify Lessor prior to making applications for any development or construction permit or license from any governmental regulatory agency pertaining to the leased premises. Lessee shall provide Lessor with a copy of said application within five (5) days of making said application, along with all plans submitted as part of said application. Lessee shall provide Lessor with a copy of any permit, license or other authorization subsequently issued within ten (10) days of receipt by Lessee.

7. TITLE TO IMPROVEMENTS: On the commencement date of the term of this Lease, all existing structures, buildings, installations, and improvements of any kind located on the leased premises are owned by and title thereto is vested in Lessor, except any cement unloading/loading installations and improvements installed by Lessee, title to which is vested in Lessee. All said existing cement unloading/loading installations and improvements installed by Lessee, as well as structures, buildings, installations and improvements of any kind placed on the leased premises by Lessee subsequent to the commencement date of the term of this Lease shall at the option of Lessor be removed by Lessee at Lessee's expense. Lessor may exercise said option as to any or all of the structures, buildings, installations and improvements installed by Lessee, including without limitation, the Siwertell, bulk cement unloading system, either before or after the expiration or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations or improvements within sixty (60) days after the expiration of the term of this Lease or sooner termination thereof. If Lessee fails to remove such structures, buildings, installations or improvements within said sixty (60) days, Lessor shall have the right to have such structures, buildings, installations or improvements removed at the expense of Lessee. As to any or all structures, buildings, installations or improvements owned by Lessee for which Lessor does not exercise said option for removal, title thereto shall vest in Lessor without cost to Lessor and without any payment to Lessee with the exception of compensation, if any, due to Lessee pursuant to Paragraph 47 of this Lease.

Machines, appliances, equipment and trade fixtures of any kind now existing or hereafter placed on the leased premises by Lessee are owned by and title thereto is vested in Lessee and shall be removed by Lessee within sixty (60) days after the expiration of the term of this Lease or sooner termination thereof; provided,

however, Lessee agrees to repair any and all damage occasioned by the removal thereof and excluding the Siwertell, bulk cement unloading system which shall be removed by Lessee only upon Lessor's request in accordance with the preceding paragraph. If any such machines, appliances, equipment and trade fixtures are not removed within sixty (60) days after the termination of this Lease, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to the Lessor and without any payment to Lessee; except that Lessor shall have the right to have the same removed at the expense of Lessee.

During any period of time employed by Lessee under this Paragraph to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay the full rental to Lessor in accordance with this Lease which said rental shall be prorated daily.

8. LIENS: Lessee agrees that it will at all times save Lessor free and harmless and defend and indemnify it against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the leased premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that any such lien, or any other liens or levy whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the leased premises or the leasehold interests of the Lessee therein, the Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien or levy has been filed. Such bond shall be acknowledged by Lessee as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in the event the bond required by this Paragraph has not been deposited with the Lessor within ten (10) days after written request has been delivered to Lessee.

This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if it has been consented to by the Lessor as provided in this Lease.

9. LEASE ENCUMBRANCE: Lessee understands and agrees that it cannot encumber the Lease, leasehold estate and the improvements thereon by a deed of trust, mortgage or other security instrument to assure the payment of the promissory note of Lessee without the prior express written consent by resolution of Lessor in each instance. If any deed of trust, mortgage or other security instrument that encumbers the Lease, leasehold estate and the improvements thereon is entered into by Lessee without Lessor's prior express written consent, Lessor shall have the right to declare this Lease in default.

If a deed of trust, mortgage, or other security instrument which Lessor has consented to by resolution, should at any time be in default, before Lessee's interest under said Lease may be sold as part of any foreclosure or trustee's sale or be assigned in lieu of foreclosure, the prior express written consent by resolution of Lessor shall be obtained in each instance. However, the original beneficiary of the deed of trust, the original mortgagee of the mortgage, and the original holder of the security instrument which the Lessor has consented to by resolution may purchase the Lessee's interest at a foreclosure or trustee's sale or accept assignment of the Lease in lieu of foreclosure, without the requirement of any further consent on the part of Lessor provided said party, as an express condition precedent, agrees in writing to assume each and every obligation under the Lease. Furthermore, before any said original beneficiary, mortgagee, or holder of a security instrument, or any other consented-to assignee or purchaser may subsequently assign or sublet any of the leasehold or Lessee's interest, it shall obtain the Lessor's prior express written consent by resolution. The decision of the Board of Port Commissioners of Lessor as to such assignee, purchaser, or subtenant shall be final.

10. ASSIGNMENT - SUBLEASE: Lessee shall not assign or transfer the whole or any part of this Lease or any interest therein, nor sublease the whole or any part of the leased premises, nor contract for the management or operation of the whole or any part of the leased premises, nor permit the occupancy of any part thereof by any other person, nor permit transfer of the Lease or possession of the leased premises by merger, consolidation or dissolution, nor permit hypothecation, pledge, encumbrance or sale of a controlling interest in the voting stock in said corporation without the consent of Lessor, evidenced by resolution, first had and obtained in each instance. It is mutually agreed that the personal qualifications of the parties controlling the corporation named herein as Lessee are a part of the consideration for the granting of this Lease and said parties do hereby agree to maintain active control and supervision of the operations conducted on the leased premises. No assignment or transfer, hypothecation, pledge, encumbrance or sale, voluntary or involuntary, in whole or in part of said corporation or the Lease or any interest therein, and no sublease of the whole or any part of the leased premises, and no contract for the management or operation of the whole or any part of the leased premises, and no permission to any person to occupy the whole or any part of the leased premises, shall be valid or effective without the consent of Lessor, first had and obtained in each instance; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said premises by any employee or business invitee of Lessee.

In the event any consent of Lessor is given for any Lease assignment or transfer, the following shall apply in each instance: (i) the Lessor shall be paid additional rent, which may be percentage rate or rates, to equal the full fair market rent, commencing on the effective date of such proposed

assignment or transfer, unless on that date the rent being paid under this Lease is equal to the full fair market rent; (ii) the Assignee hereby agrees and assumes each and every obligation under the Lease, and (iii) other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Notwithstanding, items (i) and (iii) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a consented-to lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of Paragraph 10 or (b) assignment or transfer of the Lease to a consented-to lender by deed in lieu of foreclosure, or to a consented-to lender or a third party as the successful bidder at a foreclosure sale. The rent under this Lease and any change resulting therein effective upon any Lease assignment or transfer as provided in this Paragraph shall be for the remainder of the rental period during which it occurs, and any said rent shall thereafter be subject to rental review at the commencement of subsequent and succeeding rental periods in accordance with the provisions of Paragraph 2 of this Lease. Notwithstanding the foregoing, if a change in rent is made which becomes effective upon any Lease assignment or transfer, the rent shall be subject to any adjustment applicable during the remainder of said rental period during which the Lease assignment or transfer occurred based on the change in the Consumer Price Index if such adjustment is provided for in Paragraph 2 of this Lease; provided, however, the "base figure for computing the adjustment" shall be the arithmetic average of the thirty-six (36) monthly index figures for the fifth (5th) and fortieth (40th) months immediately preceding the effective date of such proposed assignment or transfer for which the Assignee pays additional rent to Lessor to equal the full fair market rent and the "index figure for the adjustment date" shall be the arithmetic average of the thirty-six (36) monthly index figures of said Consumer Price Index for the fifth (5th) through fortieth (40th) months immediately preceding the date such adjustment is effective.

In the event any consent of Lessor is given to sublease, the following shall apply in each instance: (i) the Lessor shall be paid additional rent, which may be percentage rate or rates, to equal the full fair market rent for the sublease area, commencing on the effective date of such proposed sublease and continuing for a specified period of time which shall not extend beyond the remainder of the master Lease rental period during which it occurs or until the termination of the sublease, whichever occurs first, unless on that date the rent being paid under this Lease for said area is equal to the full fair market rent, and (ii) other conditions and qualifications determined by the Board of Port Commissioners of Lessor. As long as said sublease is in effect, said rent for the sublease area shall thereafter be subject to rental review at the commencement of subsequent and succeeding master Lease rental periods, in accordance with the provisions of Paragraph 2 of this Lease.

In the event the parties cannot agree to an amount that is equal to the full fair market rent described in this Paragraph, the full fair market rent shall be determined by the arbitration procedure described in Paragraph 2 of this Lease, except that the arbitration award shall be for a limited period of time commencing and ending as provided in this Paragraph and not for a "rental period" as specified in said Paragraph 2. Until said full fair market rent is determined pursuant to said Paragraph 2, the Lessee shall continue to make rental payments as required by this Lease at the same rate or rates in effect on the effective date of the Lease assignment or sublease. Because of this provision, underpayment of rent, if any, shall be paid to Lessor within ten (10) days of the date that the full fair market rent is determined by said arbitration procedure.

11. DEFAULT: It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition), or should Lessee fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within five (5) days after written notice thereof if default is in the submittal of a report of gross income if required in this Lease or ten (10) days after written notice thereof if default is in the performance of the use obligation provisions pursuant to Paragraph 15 of this Lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or sixty (60) days after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), Lessor shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from said premises and shall have no further right or claim thereto, and Lessor shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the leased premises. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the Lessor for all the detriment proximately caused by the Lessee's failure to perform his obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

In the event Lessor consents to an encumbrance of the Lease for security purposes in accordance with Paragraph 9 of this Lease, it is understood and agreed that Lessor shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within fifteen (15) days following the expiration of the period within which Lessee

may cure such default, provided, however, Lessor shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this Paragraph, Lessor shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Paragraph 7.

12. BANKRUPTCY: In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, Lessor shall have the right to declare this Lease in default.

The conditions of this Paragraph shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the leased premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to the Lessor all rent due or coming due under the provisions of this Lease and the premises are continuously and actively used in accordance with Paragraphs 4 and 15 of this Lease.

13. EMINENT DOMAIN: If the whole or a substantial part of the premises hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease as to the part so taken, from the day the possession of that part shall be taken for any public purpose, and the rent shall be paid up to that day, and from that day Lessee shall have the right either to cancel this Lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided, except that the minimum rent shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased; provided, however, that Lessor shall not be entitled to any award made for the taking of any installations or improvements on the leased premises belonging to Lessee including the Siwertell bulk cement unloader.

14. TERMINATION OF PRIOR AGREEMENT: It is mutually agreed that, on the effective date of this Lease, that certain lease made and entered into on the 25th day of November, 1986, between Lessor and Blue Circle West, Inc., an Arizona corporation, predecessor in interest to Lessee, bearing Lessor Document No. 20142, and that certain Tideland Use and Occupancy Permit made and entered into on the 23rd day of February, 1996, between Lessor and

PCC Acquisition Corporation, a Delaware corporation, predecessor in interest to Lessee, bearing Lessor Document No. 33959, are hereby terminated. Any rights, duties and obligations of the parties, if any, pursuant to the terms, covenants and conditions in such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations, which said statute shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time, or upon the effective date of this Lease.

15. USE OBLIGATION: Lessee shall actively and continuously use and operate the premises for the limited particular exclusive use as expressly provided for in the Use paragraph of this Lease, except for failure to so use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Said active and continuous use and operation enhances the value of the tidelands, provides needed public service, provides additional employment, taxes, and other benefits to the general economy of the area. Lessee, however, shall not and is expressly prohibited from using the premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressed in said Use paragraph.

16. MAINTENANCE AND REPAIR: As part of the consideration for the leasing thereof, Lessee agrees to assume full responsibility for the operation, maintenance, including painting, and repair of the premises, throughout the term and without expense to the Lessor. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the premises in a good, safe, healthy and sanitary condition satisfactory to Lessor and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of Lessor as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said Code.

For the purpose of keeping the premises in a good, safe, healthy and sanitary condition, Lessor shall always have the right but not the duty, to enter, view, inspect, determine the condition of and protect its interests in, the premises. If inspection discloses that the premises are not in the condition described, Lessee must perform the necessary maintenance work within ten (10) days after written notice from Lessor. Further, if at any time Lessor determines that the premises are not in the condition described, Lessor may require Lessee to file and pay for a faithful performance bond, to assure prompt correction without additional notice. The amount of this bond shall be adequate, in Lessor's opinion, to correct the unsatisfactory condition. Notwithstanding, Lessor shall not be required at any time to maintain or to make any improvements or repairs whatsoever on or

for the benefit of the leased premises. The rights reserved in this section shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

17. PERFORMANCE BOND: No major construction shall be commenced upon the demised premises by Lessee until Lessee has secured and submitted to Lessor performance bonds in the amount of the total estimated construction cost of improvements to be constructed by Lessee. In lieu of said performance bonds, the Executive Director of Lessor may at his sole discretion accept the performance and labor and material bonds supplied by Lessee's contractor or subcontractors, or performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to Lessor.

18. TAXES AND UTILITIES: This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the leased premises by reason of this Lease or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the leased premises. Lessee shall also pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the leased premises or under this Lease.

Until such time as Lessee completes the installation of a separate utility feeder in conjunction with Lessee's construction of improvements pursuant to Paragraph 5 of this Lease, Lessee agrees to pay Lessor, as additional rent, the sum of Two Thousand Seven Hundred Dollars (\$2,700) per month for Lessee's utility usage. The amount of said additional rent may change from time to time in accordance with the following procedures:

- (a) Lessor shall keep accurate records of all utility usage from the leased premises via the existing demand recording electrical meter. Lessee shall be responsible for maintenance, calibration, and repairs to said meter.
- (b) Lessor shall establish from time to time a reasonable method and procedure for collecting, recording, and analyzing data obtained from said meter. Said data shall be used by Lessor to estimate the monthly additional rent to be paid by Lessee for utility usage. Annually, Lessor shall notify Lessee of Lessee's recorded utility usage and estimated associated utility costs for each month of the preceding calendar year and shall establish the monthly amount of additional rent to be paid by Lessee for the following calendar year.

Upon Lessee's installation of a separate utility feeder, Lessee shall have the right to contract in its own name for and/or arrange to separately meter any utility service to the leased premises and shall pay before delinquency any and all charges for utilities at or on the leased premises directly to the utility service provider.

19. CONFORMANCE WITH LAWS AND REGULATIONS: Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all laws and regulations prescribed by the San Diego Unified Port District Act, any ordinances of the City in which the leased land is located, including the Building Code thereof, and any ordinances and general rules of the Lessor, including tariffs, and any applicable laws of the State of California and Federal Government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Lessee shall have the sole and exclusive obligation and responsibility to comply with the requirements of the Americans With Disabilities Act of 1990 (including regulations promulgated thereunder), and Lessor shall have no such obligations or responsibilities.

20. NONDISCRIMINATION: Lessee agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of sex, color, race, religion, handicap or national origin. If the use provided for in this Lease allows the Lessee to offer accommodations or services to the public, such accommodations or services shall be offered by the Lessee to the public on fair and reasonable terms. In complying with all such laws, including, without limitation, the Americans With Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between Lessor and Lessee.

21. PARTIAL INVALIDITY: 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 hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

22. HOLD HARMLESS: Lessee shall, to the full extent then permitted by law, defend, indemnify, protect, hold harmless, save and keep harmless Lessor, and its directors, officers and employees from and against any and all causes of action, liabilities, obligations, losses, claims and damages whatsoever, plus expenses in connection therewith, including without limitation costs of investigation and remediation of environmental conditions, counsel, consultant and/or expert fees and expenses, and penalties and interest as incurred, regardless

of the cause thereof, if the cause of action, liability, obligation, loss, claim or damage arises out of or is the result of Lessee's accepting this Lease or relates to any accident or occurrence in connection with the operation, use, condition or possession of the Premises or any portion thereof during the term of this Lease (collectively, an "Indemnified Claim"). An Indemnified Claim includes any claim or action no matter when made or filed, arising from or relating to damage to any person or property or injury to or death to any person, including without limitation any claim or action alleging latent and other defects, whether or not discoverable by Lessee or Lessor, in connection with activities undertaken by Lessee on the Premises or any portion thereof during the term of this Lease; any claim or action arising out of strict liability, negligence, gross negligence, wilful or reckless conduct in connection with activities undertaken by Lessee on the Premises or any portion thereof during the term of this Lease; and any claim or action based on any federal, state or local environmental law or regulation, arising out of the use of the Premises by the Lessee hereunder during the term of this Lease, regardless of the extent, if any, to which such claim or action is based, in whole or in part, on preexisting conditions at the Premises, including without limitation Environmental Conditions, as defined in the Acknowledgment and Disclosure Regarding Environmental Conditions, attached hereto as Exhibit C and incorporated by reference herein. Lessee and Lessor agree to promptly give notice to each other of any claim or liability hereby indemnified against following the learning thereof by such party. Lessee shall not settle or compromise any claim pursuant to this Paragraph without first obtaining Lessor's written consent. Lessee's obligations under this Paragraph shall survive the expiration of this Lease.

23. SUCCESSORS IN INTEREST: Unless otherwise provided in this Lease, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

24. EASEMENTS: This Lease and all rights given hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, to, or over the leased premises for any purpose whatsoever, and shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and other Lessor or public facilities as may be determined from time to time by Lessor to be in the best interests of the development of the tidelands. Lessor agrees that an effort shall be made so that such future easements and rights-of-way shall be so located and facilities installed as to produce a minimum amount of interference to the business of Lessee. Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements.

25. TITLE OF LESSOR: Lessor's title is derived from the provisions of the San Diego Unified Port District Act,

Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This Lease is granted subject to the terms and conditions of said Act.

26. INSURANCE: Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

(1) "OCCURRENCE" form Commercial General Liability covering premises, operations and contractual liability assumed by Lessee in this Lease in the amount of not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit.

If alcoholic beverages are served or sold on the leased premises, Liquor Liability coverage in the amount of not less than One Million Dollars (\$1,000,000) shall be obtained.

(2) Fire and Extended Coverage, including water damage and debris cleanup provisions in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the leased premises. The fire and extended coverage policies shall be endorsed to state that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Lessor and Lessee in order that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the leased premises; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by Lessee with the prior consent of Lessor, then and for that period all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes:

(i) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said mortgagee or beneficiary and applied to reduction of the debt secured by such mortgage or deed of trust and with any excess remaining after full payment of said debt to be paid over to Lessee; or

(ii) In the event that this Lease is terminated with consent of both Lessor and mortgagee or beneficiary and said improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability to restore the premises to a neat and clean condition and then for Lessor and Lessee as their interests may appear.

(3) Pollution Liability for Underground Storage Tanks

Due to operation of underground storage tanks, Lessee is required to comply with Subpart H of 40 CFR (Code of Federal Regulations) or Title 23, Division 3, Chapter 18 of California Code of Regulations (collectively, "applicable UST law"). At the time Lessee is required to comply with any provisions of applicable UST law requiring financial assurance mechanisms, Lessee shall provide Lessor with a certified copy of its Certification of Financial Responsibility. If Lessee's program for financial responsibility includes insurance, then Lessee's policy(ies) shall name Lessor, its officers, officials and employees as additional insureds, and, all other terms of Section (b), below, shall apply. Any time Lessee changes its financial assurance mechanisms, Lessee shall provide Lessor with a certified copy of its revised Certification of Financial Responsibility.

(b) General Requirements

(1) All required insurance shall be in force the first day of the term of this Lease. The cost of all required insurance shall be borne by Lessee. Certificates in a form acceptable to Lessor evidencing the existence of the necessary insurance policies, and original endorsements effecting coverage required by this clause, shall be kept on file with Lessor during the entire term of this Lease. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Lessor reserves the right to require complete, certified copies of all required policies at any time.

(2) All liability insurance policies will name, or be endorsed to name, Lessor, its officers, officials and employees as additional insureds and protect Lessor, its officers, officials and employees against any legal costs in defending claims. All insurance policies will be endorsed to state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the Lessor. All insurance policies will be endorsed to state that Lessee's

insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. And, all insurance companies must be satisfactory to Lessor.

(3) Any deductibles or self-insured retentions must be declared and acceptable to the Lessor. If the deductibles or self-insured retentions are unacceptable to the Lessor, the Lessee shall have the option of either: reducing or eliminating such deductibles or self-insured retentions as respects the Lessor, its officers, officials, and employees; or, procuring a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(4) Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or for members of the public using the leased premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

(5) Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor, incorporating such changes within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to all legal remedies.

(6) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee and Lessor shall be entitled to exercise all legal remedies.

(7) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and

total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease or with the use or occupancy of the leased premises.

(8) Lessee agrees not to use the premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the premises or adjoining premises. Lessee further agrees not to keep on the premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the premises. Lessee shall, at its sole expense, comply with any and all requirements, in regard to premises, of any insurance organization necessary for maintaining fire and other insurance coverage at reasonable cost.

27. POLICY OF LESSOR: It is the policy of the Lessor that prevailing wage rates shall be paid all persons who are employed by Lessee on the tidelands of Lessor.

28. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the leased premises, including the physical condition thereof, or any condition which may affect the leased premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

29. DAMAGE TO OR DESTRUCTION OF PREMISES: In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of Lessee-constructed improvements located within the demised premises or in the event Lessee-constructed improvements located within the demised premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, within ninety (90) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the demised premises for the purposes required by this Lease. Repair, replacement or reconstruction of improvements within the demised premises shall be accomplished in a manner and according to plans approved by Lessor; provided, however, Lessee shall not be obligated to repair, reconstruct or replace the improvements following their destruction in whole or substantial part except to the extent the loss is covered by insurance required to be carried by Lessee pursuant to Paragraph 26 of this Lease (or would be covered whether or not such required insurance is actually in effect). If Lessee elects not to restore, repair or reconstruct as herein provided, then the Lease shall terminate and Lessor shall have any rights to which it would be entitled under the provisions of Paragraph 7.

30. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION: Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to Lessor within thirty (30) days after receipt of written demand therefor a good and sufficient deed whereby all right, title and interest of Lessee in the demised premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee or those claiming under Lessee in and to the demised premises.

31. PEACEABLE SURRENDER: Upon the expiration of this Lease or the earlier termination or cancellation thereof, as herein provided, Lessee will peaceably surrender said premises to Lessor in as good condition as said premises were at the date of this Lease, ordinary wear and tear excepted. If the Lessee fails to surrender the premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including, without limitation, any succeeding lessee's claims based on Lessee's failure to surrender.

32. WAIVER: Any waiver by either party of any breach by the other party of any one or more of the covenants, conditions, or agreements of this Lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this Lease, nor shall any failure on the part of either party to require or exact full and complete compliance by the other party with any of the covenants, conditions, or agreements of this Lease be construed as in any manner changing the terms hereof or preventing the enforcement in full of the provisions hereof. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

33. HOLDOVER: This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension or give Lessee any rights in or to the leased premises. If Lessee, with Lessor's consent, remains in possession of the leased premises after expiration or termination of the term or after the date in any notice given by Lessor to Lessee terminating this Lease, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, Lessee shall pay all rent required by

this Lease, and if percentage rent is required by the Lease, it shall be paid monthly on or before the tenth (10th) day of each month.

All provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy.

34. SECTION HEADINGS: The Table of Contents and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

35. ENTIRE UNDERSTANDING: This Lease contains the entire and only understanding and agreement of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding or agreement between the parties with respect to the demised premises and that this Lease supersedes all prior negotiations, discussions, obligations and rights of the parties hereto. No waiver, modification, amendment or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized persons of the parties hereto. Each of the parties to this Lease acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representations, waiver or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease, and, each party further acknowledges that it has not executed this Lease in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

36. TIME IS OF THE ESSENCE: Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

37. NOTICES: Notices given or to be given by Lessor or Lessee to the other may be personally served upon Lessor or Lessee or any person hereafter authorized by either in writing to receive such notice or may be served by certified letter addressed to the appropriate address hereinafter set forth or to such other address as Lessor and Lessee may hereafter designate by written notice. If served by certified mail, forty-eight (48) hours after deposit in the U.S. Mail, service will be considered completed and binding on the party served.

To Lessor

Executive Director  
San Diego Unified Port District  
Post Office Box 488  
San Diego, CA 92112

To Lessee

Pacific Coast Cement Corporation  
Attn: President  
430 North Vineyard Avenue  
Suite 500  
Ontario, CA 91764-4463

Said notices shall also be served by certified letter to the beneficiary of any deed of trust, mortgage, or other security instrument of record with Lessor and consented to by resolution of Lessor who has notified Lessor in writing of its desire to receive said notice.

38. REMOVAL OF MATERIALS: Lessee hereby agrees that upon the expiration of this Lease or the sooner termination as herein provided, it will remove within sixty (60) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land and water area forming a part of or adjacent to the leased premises, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus and salvage materials shall not be so removed within sixty (60) days by the Lessee, Lessor may remove, sell and destroy the same at the expense of Lessee and Lessee hereby agrees to pay to Lessor the reasonable cost of such removal, sale or destruction; or at the option of Lessor, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of Lessor without cost to Lessor and without any payment to Lessee.

During any period of time employed by Lessee under this Paragraph to remove ships, vessels, barges, hulls, debris, surplus and salvage materials, or to test for and/or remediate Contaminants as required in this Lease, Lessee shall continue to pay the full rental to Lessor in accordance with this Lease which said rental shall be prorated daily.

39. ACCEPTANCE OF PREMISES: By signing this Lease, Lessee represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. Lessee agrees it is relying solely on such independent inspection, tests, investigations and observations in making this Lease. Lessee further acknowledges that the premises are in the condition called for by this Lease, that Lessor has performed all work with respect to premises and that Lessee does not hold Lessor responsible for any defects in the premises. Lessee furthermore accepts and shall be responsible for any risk of harm to any person and property, including without limitation employees of Lessee, from any latent defects in the premises. Notwithstanding anything to the contrary contained in this Paragraph, Lessor and Lessee agree, the leased premises will not be in a condition to support the improvements required to be made by Lessee, pursuant to Paragraph 5 of this Lease, until Lessor has completed its repairs to the seawall at Berth 10-6.

40. WASTE/NUISANCE: Lessee shall not use the leased premises in a manner that constitutes waste or nuisance.

41. GENDER/SINGULAR/PLURAL: The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and

each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

42. EQUAL EMPLOYMENT OPPORTUNITY: Lessee agrees at all times to fully comply with all applicable laws prohibiting discrimination against any person or class of persons for employment because of race, color, religion, sex, handicap or national origin and, shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, handicap or national origin. Except during the time Lessee is exempt pursuant to written policy of Lessor, Lessee shall submit to Lessor for review and approval a written affirmative action program to attain improved employment for racial and ethnic minorities and women and during the term of this Lease shall further make available employment records to Lessor upon request. Lessee shall certify in writing to Lessor that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Housing Act, and any other applicable Federal, State, and local law, regulation and policy (including without limitation those adopted by Lessor) relating to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default as provided in said Lease and Lessor may exercise any right as provided therein and as otherwise provided by law.

43. ATTORNEY'S FEES: In the event any suit is commenced to enforce, protect or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

44. HAZARDOUS MATERIALS: Lessee shall comply with all laws regarding hazardous substances, materials or wastes, or petroleum products or fraction thereof regulated by law (herein collectively referred to as "Contaminants") relative to occupancy and use of the leased premises. Lessee shall be liable and responsible for any Contaminants arising out of the occupancy or use of the leased premises by Lessee. Such liability and responsibility shall include, but not be limited to, (i) removal from the leased premises any such Contaminants; (ii) removal from any area outside the premises, including but not limited to surface and groundwater, any such Contaminants generated as part of the operations on the leased premises; (iii) damages to persons, property and the leased premises; (iv) all claims resulting from those damages; (v) fines imposed by any

governmental agency, and (vi) any other liability as provided by law. Lessee shall defend, indemnify and hold harmless the Lessor, its officials, officers, agents, and employees from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorney's fees therefor. Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

If Lessee has in the past or continues to use, dispose, generate, or store Contaminants on the leased premises, Lessor, or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, enter upon the premises and make any inspections, tests or measurements Lessor deems necessary in order to determine if a release of Contaminants has occurred. Lessor shall give Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operations. If such tests indicate a release of Contaminants, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense, and at any time during the term of this Lease, to have tests for such Contaminants conducted by a qualified party or parties on the leased premises. If Lessor has reason to believe that any Contaminants that originated from a release on the leased premises have contaminated any area outside the premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense, and at any time during the term of this Lease, to have tests for such Contaminants conducted by a qualified party or parties on said area outside the leased premises.

The tests conducted by Lessee's qualified party shall include, but not be limited to, applicable comprehensive soil, emission, or groundwater sampling test or other procedures to determine any actual or possible contamination. Lessee shall expeditiously, but no longer than thirty (30) days after Lessor's request for such tests, furnish to Lessor the results of said tests, sampling plans, and analysis thereof identifying any Contaminants which exceed then applicable levels permitted by federal, state, or local laws. Lessee shall report such contamination to the Lessor within seventy-two (72) hours and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation.

45. ABOVEGROUND STORAGE TANKS: Lessee shall be responsible for any aboveground storage tanks on the leased premises. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance

therewith, including conformance with the latest version of said laws and regulations. In addition, Lessee shall maintain and repair said tanks and conform and comply with all other applicable laws and regulations for aboveground storage tanks, including without limitation all of the requirements of Health & Safety Code, Sections 25270 through 25170.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board, the Lessor, or responsible agency, to conduct periodic inspections and complying with valid orders of said Board, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with an unauthorized release from such tanks, including but not limited to, investigative, surface and groundwater cleanup, expert and agency fees.

46. UNDERGROUND STORAGE TANKS: In the event any underground storage tanks are located on the premises or hereinafter placed on the premises by any party during the term or extension of this Lease, Lessee shall be responsible for tank monitoring of all such underground storage tanks as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases to HMMD and the Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of Contaminants including but not limited to investigative, surface and groundwater cleanup, and expert and agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the underground tank system. Lessee further agrees to be responsible for maintenance and repair of the storage tanks, obtaining tank permits, filing a business plan with HMMD or other responsible agency and for paying underground storage tank fees, permit fees, and other regulatory agency fees relating to underground storage tanks.

Lessee agrees to keep complete and accurate records on the premises for a period of not less than thirty-six (36) months from the applicable events, including, but not limited to permit applications, monitoring, testing, equipment installation, repairing and closure of the underground storage tanks, and any unauthorized releases of Contaminants and make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any Operator of such underground storage tanks.

Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing or hereinafter

enacted applicable to underground storage tanks, including without limitation any such laws and regulations which alter any of the above requirements.

47. TERMINATION: It is mutually agreed that in addition to the other rights and remedies of Lessor, this Lease may be terminated by Lessor if at anytime after the fifth year of the Lease term the annual tonnage of cement imported by Lessee, by waterborne vessel, at Lessor's marine terminal facilities, is less than 150,000 metric tons per year in any two consecutive years, and Lessor gives six (6) months' advance written notice of termination to Lessee within six (6) months following said two-(2) year period. Said minimum annual tonnage is a continuing obligation throughout the term of this Lease. Lessor's termination of this Lease pursuant to this Paragraph shall not result in Lessor incurring any liability whatsoever for any damage or loss occasioned by such termination, including, without limitation, damage to or interference with or loss of business or franchise occasioned by such termination, except the amount of compensation expressly provided for in either Schedule A or Schedule B of this Paragraph, as applicable.

If Lessor elects to exercise its right to terminate pursuant to this Paragraph, Lessor shall have the option to either (i) take title to the Siwertell, bulk cement unloading system installed by Lessee, in which event Schedule A shall apply to determine the amount of compensation to be paid to Lessee, or (ii) require Lessee to remove the Siwertell, bulk cement unloading system at Lessee's expense, in which event Schedule B shall apply to determine the amount of compensation to be paid to Lessee. The effective date of termination, not the date of Lessor's notice of intent to terminate, shall determine the amount of compensation to be paid to Lessee as specified in the applicable schedule.

#### SCHEDULE A

<u>Termination Date</u>	<u>Compensation</u>
April 1, 2004 through March 31, 2005	\$3,910,000
April 1, 2005 through March 31, 2006	3,680,000
April 1, 2006 through March 31, 2007	3,450,000
April 1, 2007 through March 31, 2008	3,220,000
April 1, 2008 through March 31, 2009	2,990,000
April 1, 2009 through March 31, 2010	2,760,000
April 1, 2010 through March 31, 2011	2,530,000
April 1, 2011 through March 31, 2012	2,300,000
April 1, 2012 through March 31, 2013	2,070,000
April 1, 2013 through March 31, 2014	1,840,000
April 1, 2014 through March 31, 2015	1,610,000
April 1, 2015 through March 31, 2016	1,380,000
April 1, 2016 through March 31, 2017	1,150,000
April 1, 2017 through March 31, 2018	920,000
April 1, 2018 through March 31, 2019	690,000
April 1, 2019 through March 31, 2020	460,000
April 1, 2020 through March 31, 2021	230,000
April 1, 2021 through September 30, 2026	0

SCHEDULE B

<u>Termination Date</u>	<u>Compensation</u>
April 1, 2004 through March 31, 2005	\$1,666,000
April 1, 2005 through March 31, 2006	1,568,000
April 1, 2006 through March 31, 2007	1,470,000
April 1, 2007 through March 31, 2008	1,372,000
April 1, 2008 through March 31, 2009	1,274,000
April 1, 2009 through March 31, 2010	1,176,000
April 1, 2010 through March 31, 2011	1,078,000
April 1, 2011 through March 31, 2012	980,000
April 1, 2012 through March 31, 2013	882,000
April 1, 2013 through March 31, 2014	784,000
April 1, 2014 through March 31, 2015	686,000
April 1, 2015 through March 31, 2016	588,000
April 1, 2016 through March 31, 2017	490,000
April 1, 2017 through March 31, 2018	392,000
April 1, 2018 through March 31, 2019	294,000
April 1, 2019 through March 31, 2020	196,000
April 1, 2020 through March 31, 2021	98,000
April 1, 2021 through September 30, 2026	0

If the whole or a part of the leased premises is taken under the power of eminent domain, the amount of compensation specified in this Paragraph shall not be considered in valuing the improvements to be taken.

Notwithstanding the above, Lessor shall have the right, pursuant to Paragraph 7, to require Lessee, at Lessee's expense, to remove any or all other structures, installations, improvements and trade fixtures of any kind placed on the leased premises by Lessee and as to any such other structures, installations, improvements and trade fixtures for which Lessor does not exercise said right for removal at Lessee's expense, title thereto shall vest in Lessor without any payment to Lessee therefor. In addition, if Lessor terminates this Lease at any time in accordance with the provisions of Paragraph 11 of this Lease, Lessor shall not be required to pay Lessee any compensation pursuant to this Paragraph.

48. ACKNOWLEDGMENT OF LESSOR'S IMPROVEMENTS: Lessee agrees that it has examined the leased premises and the condition thereof, that the improvements thereon in their present condition are satisfactory and usable for Lessee's purposes and that no representations as to value or condition have been made by or on behalf of Lessor.

49. SECURITY DEPOSIT: A security deposit in the sum of Forty-Eight Thousand Nine Hundred Forty-Two Dollars (\$48,942) shall be provided Lessor by Lessee, on or before the commencement date of the term of this Lease. The security deposit shall be held by Lessor and used for the purpose of remedying Lessee's defaults in the payment of rent, to repair damages to the premises or to clean the premises upon termination of this Lease.

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit drawn on a bank having a branch located in San Diego County or having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to Lessor or order. Each Letter of Credit provided during the term of this Lease shall be valid for a minimum of twelve (12) months from date of issuance. When the remaining term of this Lease is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the expiration date of this Lease. If a Letter of Credit is not valid for the entire remaining term of this Lease plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration. All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to Lessor for the purposes and uses hereinabove provided. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Executive Director of Lessor, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires the Lessor to send written notice of default or request or demand payment from Lessee after default, prior to Lessor drawing on any funds under the Letter of Credit.

Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by Lessor under this Lease and other leases, permits and agreements between

Lessor and Lessee does not exceed Twenty-Five Thousand Dollars (\$25,000), Lessee may elect to provide said security deposit in the form of cash.

The amount of the security deposit may be adjusted from time to time at the discretion of the Executive Director of Lessor. Following any such adjustment, the amount of the security deposit may not exceed three months' rent under the then current rent requirements of the Lease. In the event the amount of the security deposit is increased, Lessee shall submit the additional security deposit within thirty (30) days of being notified in writing of the increase.

Lessee shall maintain the required security deposit continuously throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease in accordance with Paragraph 11.

The security deposit or the remaining portion thereof, shall be rebated, released, assigned, surrendered, or endorsed to Lessee or order, as applicable, after the termination of this Lease.

recording requested by and mail to:  
District Clerk  
San Diego Unified Port District  
P.O. Box 488  
San Diego, CA 92112  
No Document Fee  
Recordation for benefit of District

**ABSTRACT OF LEASE**

50. ABSTRACT OF LEASE: This is the final paragraph and abstract of the Lease dated SEPTEMBER 29TH, 1996, between SAN DIEGO UNIFIED PORT DISTRICT, Lessor, and PACIFIC COAST CEMENT CORPORATION, a Delaware corporation, Lessee, concerning the premises described in Exhibits "A" and "B," attached hereto and by this reference made a part hereof.

For good and adequate consideration, Lessor leases the premises to Lessee, and Lessee hires them from Lessor, for the term and on the provisions contained in the Lease, including without limitation provisions prohibiting assignment, subleasing, and encumbering said Lease without the express written consent of Lessor in each instance, all as more specifically set forth in said Lease, which said Lease is incorporated in this abstract by this reference.

The term is thirty (30) years, beginning October 1, 1996, and ending September 30, 2026, with options to extend the term for four (4) additional five- (5) year periods.

This abstract is not a complete summary of the Lease. Provisions in the abstract shall not be used in interpreting the Lease provisions. In the event of conflict between the abstract and other parts of the Lease, the other parts shall control. Execution hereof constitutes execution of the Lease itself.

Port Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By Sarah Mason  
SARAH H. MASON  
DEPUTY PORT ATTORNEY

By [Signature]  
ASSISTANT Executive Director

PACIFIC COAST CEMENT CORPORATION

By [Signature]  
Title: SR VICE President

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)

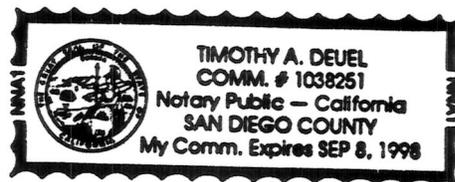
COUNTY OF SAN DIEGO)

On October 2nd, 1996 before me,

Timothy A. Deuel, Notary Public, personally  
appeared Donald E. Hillman, Jr.,

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

WITNESS my hand and official seal.



Signature

Timothy A. Deuel

**PARCEL NO. 1** (Building area)

Commencing at Harbor Line Station No. 460 on the U.S. Bulkhead Line, as said U.S. Bulkhead Line is now established for the Bay of San Diego, and delineated on map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said Harbor Line Station 460 along the southeasterly prolongation of said U.S. Bulkhead Line south 50°50'00" east a distance of 1,308.52 feet; thence leaving said southeasterly prolongation south 39°10'00" west a distance of 717.00 feet to a point of intersection with the face of wall of the loading dock of the building commonly known as "Transit Shed No. 2," Tenth Avenue Marine Terminal, thence continuing from said point of intersection of the loading dock south 39°10'00" west a distance of 15.00 feet to a point of intersection with the interior face of wall of the above described building, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence south 50°50'00" east a distance of 481.50 feet; thence south 39°10'00" west a distance of 200.08 feet; thence north 50°50'00" west a distance of 198.00 feet; thence north 39°10'00" east a distance of 20.00 feet; thence north 50°50'00" west a distance of 43.00 feet; thence south 39°10'00" west a distance of 20.00 feet; thence north 50°50'00" west a distance of 240.50 feet; thence north 39°10'00" east a distance of 200.08 to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 95,479 square feet of building area.

**PARCEL NO. 2** (Building roof area)

Commencing at the above described Harbor Line Station No. 460 on the U.S. Bulkhead Line; thence along the above described southeasterly prolongation from said Harbor Line Station No. 460 south 50°50'00" east a distance of 1,308.52 feet; thence leaving said southeasterly prolongation south 39°10'00" west a distance of 732.00 feet to a point of intersection with the exterior face of wall of the said building commonly known as "Transit Shed No. 2," said point also being the TRUE POINT OF BEGINNING of Parcel No. 2; thence south 50°50'00" east a distance of 482.17 feet; thence south 39°10'00" west a distance of 201.08 feet; thence north 50°50'00" west a distance of 482.17 feet; thence north 39°10'00" east a distance of 201.08 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 96,955 square feet of building roof area.

DRAWN <u>AS/NP</u>	<b>SAN DIEGO UNIFIED PORT DISTRICT</b> TIDELAND LEASE Within Corporate Limits of San Diego PACIFIC COAST CEMENT CORPORATION	DATE <u>3 May 1996</u>
CHECKED _____		SCALE _____
REVIEWED <u><i>W. J. [Signature]</i></u>		REF. <u>6617anp</u>
APPROVED <u><i>Marino W. Brash</i></u> DIRECTOR OF ENGINEERING		DRAWING NO. 020-037

**PARCEL NO. 3** (Loading Dock Area)

Beginning at the most northerly corner point of the above described Parcel No. 2, said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence south 50°50'00" east a distance of 482.17 feet; thence south 39°10'00" west a distance of 15.00 feet; thence north 50°50'00" west a distance of 482.17 feet; thence north 39°10'00" east a distance of 15.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 7,233 square feet of loading dock area.

**PARCEL NO. 4** (Paved Area)

Beginning at the most easterly corner point of the above described Parcel No. 3, said point also being the TRUE POINT OF BEGINNING of Parcel No. 4; thence south 50°50'00" east a distance of 75.00 feet; thence south 39°10'00" west a distance of 103.87 feet; thence north 50°50'00" west a distance of 29.00 feet; thence south 39°10'00" west a distance of 41.21 feet; thence north 50°50'00" west a distance of 32.00 feet; thence south 39°10'00" west a distance of 71.00 feet; thence north 50°50'00" west a distance of 14.00 feet; thence north 39°10'00" east a distance of 216.08 feet to the TRUE POINT OF BEGINNING of Parcel No. 4, containing 10,680 square feet of Tideland area.

**PARCEL NO. 5** (Paved Area)

Beginning at the most southwesterly corner point of the above described Parcel No. 2, said point also being the TRUE POINT OF BEGINNING of Parcel No. 5; thence south 39°10'00" west a distance of 24.20 feet; thence north 54°16'01" west a distance of 50.09 feet; thence north 50°50'00" west a distance of 432.17 feet; thence north 39°10'00" east a distance of 27.20 feet to a point on the westerly face of wall of the building commonly known as "TRANSIT SHED NO. 2", Tenth Avenue Marine Terminal; thence along said face of wall south 50°50'00" east a distance of 482.17 feet to the TRUE POINT OF BEGINNING of Parcel No. 5, containing 13,040 square feet of tideland area.

**PARCEL NO. 6** (PREFERENTIAL NON-EXCLUSIVE USE UNLOADER TRACK AREA)

Beginning at the most northwesterly corner point of the above described Parcel No. 5, said point also being the TRUE POINT OF BEGINNING of Parcel No. 6; thence south 50°50'00" east a distance

Page 2 of 4

DRAWN <u>AS/NP</u>	<b>SAN DIEGO UNIFIED PORT DISTRICT</b> TIDELAND LEASE Within Corporate Limits of San Diego PACIFIC COAST CEMENT CORPORATION	DATE <u>3 May 1996</u>
CHECKED _____		SCALE _____
REVIEWED <u>[Signature]</u>		REF. <u>6617anp</u>
APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING		DRAWING NO. 020-037

EXHIBIT "A"

of 352.17 feet; thence south 39°10'00" west a distance of 38.10 feet to a point on the face of seawall Tenth Avenue Marine Terminal; thence along said seawall north 50°50'00" west a distance of 363.00 feet; thence leaving said seawall north 39°10'00" east a distance of 38.10 feet; thence south 50°50'00" east a distance of 10.83 feet to the TRUE POINT OF BEGINNING of Parcel No. 6, containing 13,830 square feet of tideland area.

Reserving therefrom an easement for fire hydrant access located 261.67 feet from the most easterly corner point of the above described Parcel No. 3. Also: Reserving therefrom a general access easement 15.00 feet in width lying between the southwesterly wall of the said Transit Shed No. 2 and the seawall adjacent to Berth No. 6.

**PARCEL NO. 7 (EASEMENT JOINT USE)**

Commencing at Harbor Line Station No. 460 on the U.S. Bulkhead Line, as said U.S. Bulkhead Line is now established for the Bay of San Diego, and delineated on map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426," approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence Leaving said Harbor Line Station 460 along the southeasterly prolongation of said U.S. Bulkhead Line south 50°50'00" east a distance of 2,363.67' feet; thence leaving said southeasterly prolongation south 39°10'00" west a distance of 201.00 feet to a point designated as Point "A", said Point "A" also being the TRUE POINT OF BEGINNING of the herein described easement being 6.0 feet in wide lying 3.0 feet on each side of the following described center line; thence south 67°03'16" west a distance of 310.00 feet; thence south 71°01'06" west a distance of 276.66 feet; thence north 17°37'56" west a distance of 325.07 feet; thence north 50°50'00" west a distance of 300.00 feet; thence south 15°20'14" west a distance of 131.18 feet; thence south 39°10'00" west a distance of 65.00 feet to a point on the face of wall of the loading dock of the building commonly known as "TRANSIT SHED NO. 2", Tenth Avenue Marine Terminal, said point also being the POINT OF TERMINUS of herein described easement, containing 8,447 square foot of tideland area.

DRAWN <u>AS/NP</u> CHECKED _____ REVIEWED <u>[Signature]</u>	<p align="center"><b>SAN DIEGO UNIFIED PORT DISTRICT</b></p> <p align="center">TIDELAND LEASE</p> <p>Within Corporate Limits of San Diego          PACIFIC COAST CEMENT CORPORATION</p>	DATE <u>3 May 1996</u> SCALE _____ REF. <u>6617anp</u>
APPROVED <u>[Signature]</u> REGIONAL ENGINEER		DRAWING NO. 020-037

**PARCEL NO. 8 (EASEMENT EXCLUSIVE USE)**

Beginning at the above described Point "A", said Point "A" also being the "TRUE POINT OF BEGINNING" of herein described easement being 6.0 feet in wide lying 3.0 feet on each side of the following described center line, thence north 54°45'44" east a distance of 94.48 feet; thence south 75°08'16" east a distance of 68.03 feet; thence north 80°01'00" east a distance of 75.07 feet to a point of BEGINNING of an easement 24.00 feet in width lying 12.0 feet on each side of the following described center line; thence north 80°01'00" east a distance of 22.17 feet; thence north 80°01'00" east a distance of 3.83 feet to a POINT OF TERMINUS; thence retracing from the POINT OF TERMINUS of said 24.00 feet wide easement south 80°01'00" west a distance of 3.83 feet; thence south 39°10'00" west a distance of 16.85 feet to a point of BEGINNING of an easement 6.00 feet in width lying 3.0 feet on each side of the following described center line; thence south 39°10'00" west a distance of 30.00 feet to a POINT OF TERMINUS of herein described easement, containing 2,220 square feet of Tideland area.

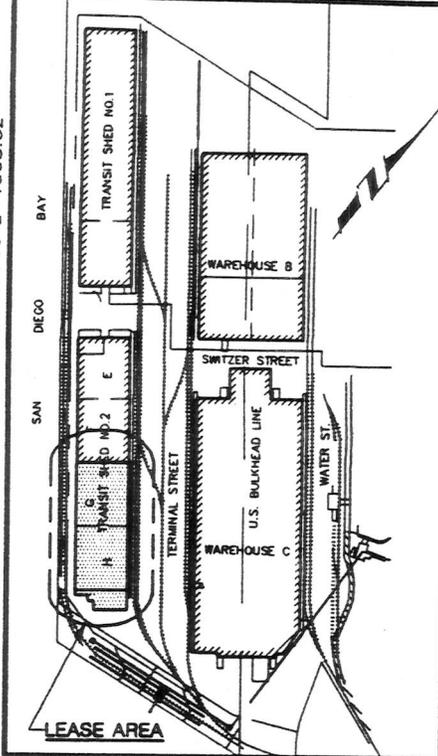
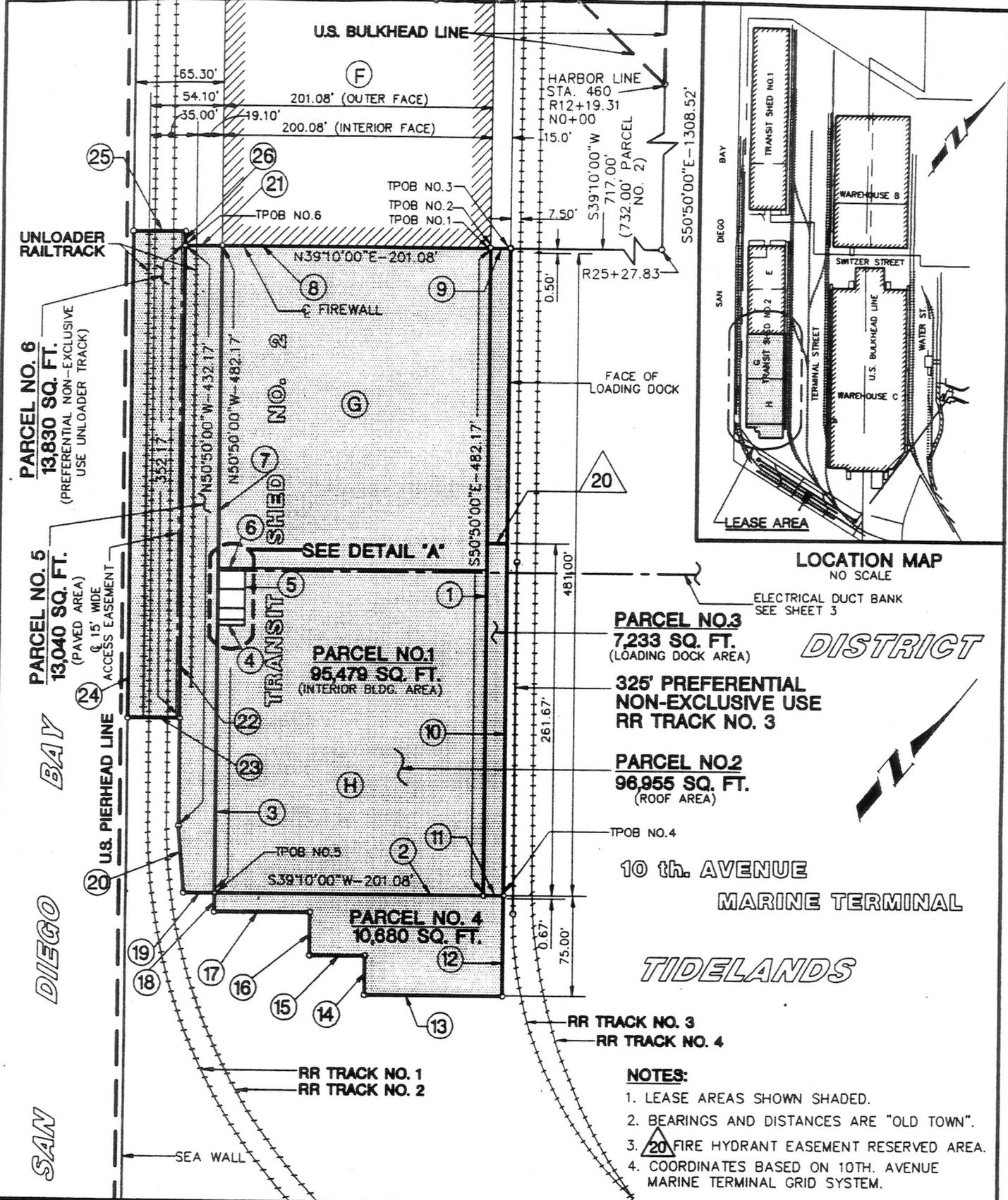
The extreme limit lines of said easement are to be prolonged or shortened at all angle points and points of intersections to ensure a uniform width throughout.

The above described lease, reservation areas and easement area are those delineated on Drawing No. 020-037, Sheet 1, 2, and 3, dated 3 May 1996, and made a part of this agreement.

Page 4 of 4

DRAWN <u>AS/NP</u> CHECKED _____ REVIEWED <u>[Signature]</u> APPROVED <u>[Signature]</u> DIRECTOR OF ENGINEERING	<b>SAN DIEGO UNIFIED PORT DISTRICT</b> TIDELAND LEASE Within Corporate Limits of San Diego PACIFIC COAST CEMENT CORPORATION	DATE <u>3 May 1996</u> SCALE _____ REF. <u>6617anp</u> DRAWING NO. <u>020-037</u>
--	--	---

EXHIBIT "A"



LOCATION MAP  
NO SCALE

ELECTRICAL DUCT BANK  
SEE SHEET 3

**PARCEL NO. 3**  
7,233 SQ. FT.  
(LOADING DOCK AREA)

*DISTRICT*

325' PREFERENTIAL  
NON-EXCLUSIVE USE  
RR TRACK NO. 3

**PARCEL NO. 2**  
96,955 SQ. FT.  
(ROOF AREA)

10 th. AVENUE  
MARINE TERMINAL

*TIDELANDS*

**NOTES:**

1. LEASE AREAS SHOWN SHADED.
2. BEARINGS AND DISTANCES ARE "OLD TOWN".
3. FIRE HYDRANT EASEMENT RESERVED AREA.
4. COORDINATES BASED ON 10TH. AVENUE MARINE TERMINAL GRID SYSTEM.

DRAWN ASNOR SANTONIL  
 CHECKED \_\_\_\_\_  
 REVIEWED \_\_\_\_\_  
 APPROVED \_\_\_\_\_  
 DIRECTOR OF ENGINEERING

**SAN DIEGO UNIFIED PORT DISTRICT  
 TIDELAND LEASE**  
 WITHIN CORPORATE LIMITS OF SAN DIEGO  
**PACIFIC COAST CEMENT CORPORATION**

DATE 3 MAY 1996  
 SCALE 1"=100'  
 REF. 2806-B, 319-D, 2E-20

DRAWING NO.  
**020-037**  
 SHEET 1 OF 3

**TRAVERSE DATA:**

**PARCEL NO.1**

- ① S50°50'00"E-481.50
- ② S39°10'00"W-200.08'
- ③ N50°50'00"W-198.00'
- ④ N39°10'00"E-20.00'
- ⑤ N50°50'00"W-43.00'
- ⑥ S39°10'00"W-20.00'
- ⑦ N50°50'00"W-240.50'
- ⑧ N39°10'00"E-200.08'

**PARCEL NO. 3**

- ⑨ N39°10'00"E-15.00'
- ⑩ S50°50'00"E-482.17'
- ⑪ S39°10'00"W-15.00'

**PARCEL NO.4**

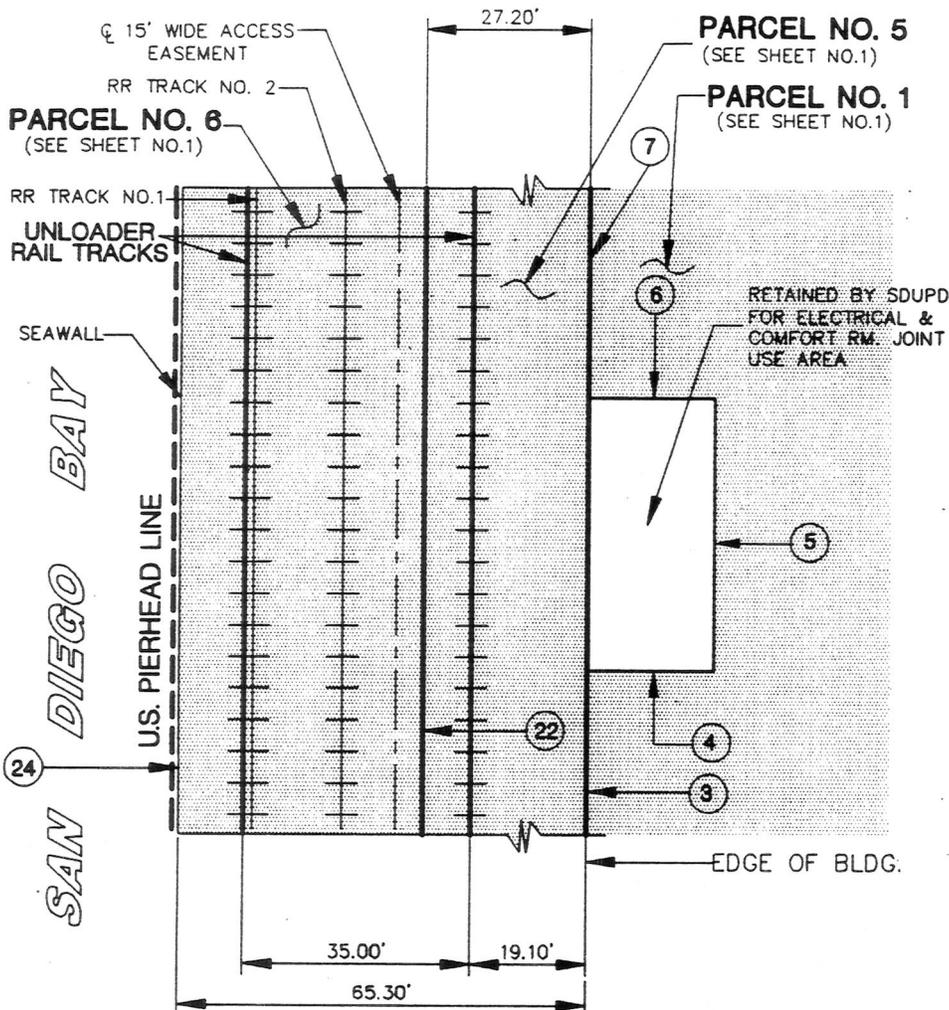
- ⑫ S50°50'00"E-75.00'
- ⑬ S39°10'00"W-103.87'
- ⑭ N50°50'00"W-29.00'
- ⑮ S39°10'00"W-41.21'
- ⑯ N50°50'00"W-32.00'
- ⑰ S39°10'00"W-71.00'
- ⑱ N50°50'00"W-14.00'

**PARCEL NO. 5**

- ⑲ S39°10'00"W-24.20'
- ⑳ N54°16'01"W-50.09'
- ㉑ N39°10'00"E-27.20'

**PARCEL NO. 6**

- ㉒ S50°50'00"E-352.17'
- ㉓ S39°10'00"W-38.10'
- ㉔ N50°50'00"W-363.00'
- ㉕ N39°10'00"E-38.10'
- ㉖ S50°50'00"E-10.83'



**DETAIL "A"**  
SCALE: 1"=30'

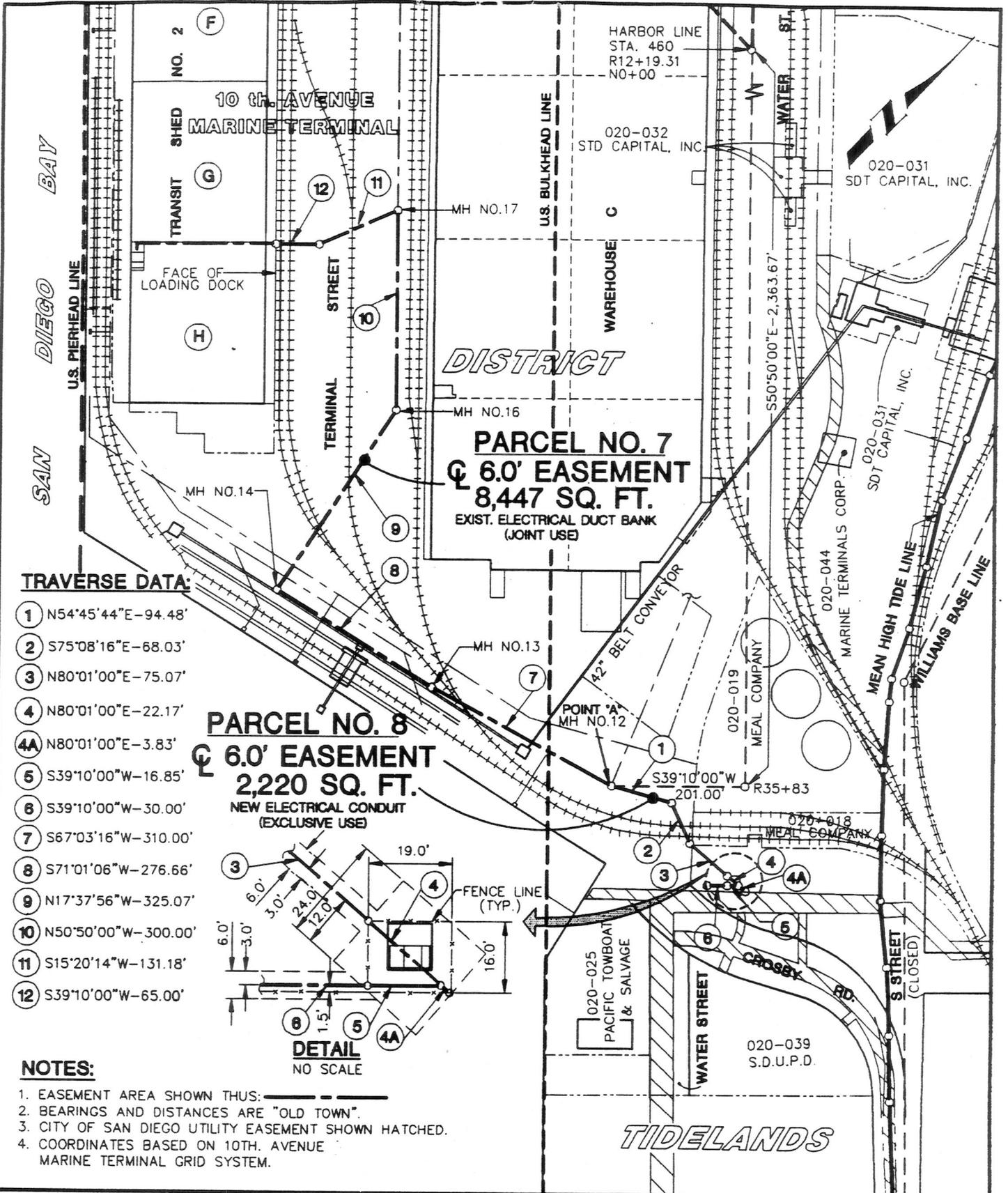
DRAWN ASNOR SANTONIL  
CHECKED \_\_\_\_\_  
REVIEWED \_\_\_\_\_

APPROVED  
*Manning W. Boak*  
DIRECTOR OF ENGINEERING

**SAN DIEGO UNIFIED PORT DISTRICT  
TIDELAND LEASE**  
WITHIN CORPORATE LIMITS OF SAN DIEGO  
**PACIFIC COAST CEMENT CORPORATION**

DATE 3 MAY 1996  
SCALE AS SHOWN  
REF. 2806-B, 319-B, 2E-20

DRAWING NO.  
**020-037**  
SHEET 2 OF 3



DRAWN ASNOR SANTONIL  
 CHECKED   
 REVIEWED   
 APPROVED   
 DIRECTOR OF ENGINEERING

**SAN DIEGO UNIFIED PORT DISTRICT**  
**TIDELAND LEASE**  
 WITHIN CORPORATE LIMITS OF SAN DIEGO  
**PACIFIC COAST CEMENT CORPORATION**

DATE 3 MAY 1996  
 SCALE 1"=200'  
 REF. 324-D, 2E-20, LAES448-02  
 DRAWING NO. **020-037**  
 SHEET 3 OF 3

ACKNOWLEDGMENT AND DISCLOSURE  
REGARDING ENVIRONMENTAL CONDITIONS

IT IS HEREBY ACKNOWLEDGED BY Pacific Coast Cement Corporation, a Delaware corporation, ("Lessee"), and the San Diego Unified Port District, a public body, corporate and politic, duly organized and existing under the laws of the State of California ("Lessor") that:

1. Certain Environmental Conditions (a) may exist at, under, on or near (i) the Premises, as defined in Exhibit A of this Lease and (ii) property which is contiguous, upgradient or otherwise in the vicinity of the Premises (the "Surrounding Property") and (b) may be encountered during activity undertaken pursuant to the Lease, including without limitation Lessee's construction of improvements (the "Work") as described in Paragraph 5 of this Lease.

2. For purposes of this Acknowledgment and Disclosure, the term "Environmental Conditions" means (a) any environmental conditions, circumstances or other matters of fact, pertaining to, relating to or otherwise affecting the environment, including without limitation any natural resources (including flora and fauna), soil, surface water, ground water, any present or potential drinking water supply, subsurface strata or the ambient air, and relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposal (including, without limitation, the abandonment or discarding of barrels, containers and other closed receptacles and fill materials containing any hazardous materials, hazardous wastes or toxic substances), dumping or threatened release of hazardous materials, hazardous wastes or toxic substances and (b) the exposure of any persons (including, without limitation, lessees, licensees, permittees or other users of the Premises and/or the Surrounding Property) to hazardous materials, hazardous wastes or toxic substances, or the exposure of other natural persons within or outside the boundaries of the Premises and/or the Surrounding Property to hazardous materials, hazardous wastes or toxic substances related to or otherwise arising from operations, acts, omissions or other conduct at the Premises and/or the Surrounding Property (as the case may be) (the "Environmental Conditions").

3. Information relating to Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property, developed as a result of sampling, testing and analysis undertaken from time to time by Lessor, Lessor's tenants, third-party contractors and/or others, may be contained in certain of

Lessor's files ("Lessor's Files"). Subject to reasonable confidentiality assurances from Lessee, Lessor will make Lessor's Files available to Lessee for review. Lessor has not undertaken to conduct, and Lessor's Files do not represent, a comprehensive analysis of Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property.

4. Information relating to Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property may be contained in Lessee's files ("Lessee's Files").

5. Information relating to Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property may be contained in the files of other governmental entities or agencies, including without limitation the San Diego Regional Water Quality Control Board, the San Diego Department of Health Services, the San Diego Air Pollution Control District, the San Diego Fire Department, the City of San Diego, the Centre City Development Corporation, the California Department of Toxic Substances Control, the California Environmental Protection Agency, and Region IX of the United States Environmental Protection Agency ("Agency Files"). The Agency Files are readily available to Lessee.

6. Lessor's knowledge and files regarding Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property are not complete. Lessor has encouraged Lessee to review all readily available information relating to such Environmental Conditions, including (a) Lessor's Files, (b) Lessee's Files, and (c) Agency Files (collectively, the "Readily Available Information") to ascertain to the fullest extent possible the nature and existence of Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property. Lessee hereby assumes responsibility for ascertaining any information contained in the Readily Available Information.

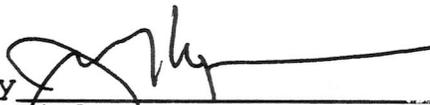
7. Neither Lessor nor Lessee makes any representation or warranty, express or implied, in this Acknowledgment and Disclosure, the Lease or otherwise, regarding (a) the presence, extent, impact or consequences, whether foreseeable or unforeseeable, of any Environmental Conditions at, under, on or near the Premises and/or the Surrounding Property, or (b) the suitability of the Premises in any respect for any purpose intended by Lessee under the Lease.

ACKNOWLEDGED AND DISCLOSED:

SAN DIEGO UNIFIED PORT DISTRICT

PACIFIC COAST CEMENT CORPORATION

By   
ASSISTANT Executive Director

By   
Title: Sr. Vice President

## GUARANTY

GUARANTY: Sunbelt Corporation, a Delaware corporation, (Guarantor), whose address is 1 Riverway, Suite 2200, Houston, Texas 77056, as a material inducement to and in consideration of the SAN DIEGO UNIFIED PORT DISTRICT (Lessor) entering into a written Lease (the Lease) with Pacific Coast Cement Corporation (Lessee), dated the same date as this Guaranty, pursuant to which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the city of San Diego, County of San Diego, California, in accordance with the Lease on file in the Office of the Clerk of Lessor, Document No. \_\_\_\_\_, attached to this Guaranty, and made a part of it, unconditionally guarantees and promises to and for the benefit of Lessor that Lessee shall perform the provisions of the Lease that Lessee is to perform.

If Guarantor is more than one person, Guarantor's obligations are joint and several and are independent of Lessee's obligations. A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Lessee, or all, or whether any other Guarantor or Lessee, or all, are joined in the action.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

The provisions of the Lease may be changed by agreement between Lessor and Lessee at any time, or by course of conduct, without the consent of or without notice to Guarantor. This Guaranty shall guarantee the performance of the Lease as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty.

This Guaranty shall not be affected by Lessor's failure or delay in the enforcement of any of its rights.

If Lessee defaults under the Lease, Lessor can proceed immediately against Guarantor or Lessee, or both, or Lessor can enforce against Guarantor or Lessee, or both, any rights that it has under the Lease, or pursuant to applicable laws. If the Lease terminates and Lessor has any rights it can enforce against Lessee after termination, Lessor can enforce those rights against Guarantor without giving previous notice to Lessee or Guarantor, or without making any demand on either of them.

Guarantor waives the right to require Lessor to (1) proceed against Lessee; (2) proceed against or exhaust any security that Lessor holds from Lessee; or (3) pursue any other remedy in Lessor's power. Guarantor waives any defense by reason of any disability of Lessee, and waives any other defense based on the termination of Lessee's ability from any cause. Until all Lessee's obligations to Lessor have been discharged in full, Guarantor has no right of subrogation against Lessee. Guarantor

waives its right to enforce any remedies that Lessor now has, or later may have, against Lessee. Guarantor waives any right to participate in any security now or later held by Lessor. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty, and waives all notices of the existence, creation, or incurring of new or additional obligations.

If Lessor disposes of its interest in the Lease, Lessor, as used in this Guaranty, shall mean Lessor's successors.

If Lessor is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Lessor all costs incurred, including, without limitation, reasonable attorneys' fees.

Guarantor's obligations under this Guaranty shall be binding on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir or other person or entity succeeding lawfully, and pursuant to the provisions of said Lease, to the rights or obligations of Guarantor.

SUNBELT CORPORATION

DATED: Sept 12 1996

By   
Title: SR VICE PRESIDENT

(FOR USE BY GUARANTOR)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On Sept. 12, 1996 before me,  
Cindy L. Evangelista, personally  
appeared Jon B. Thompson,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Cindy L. Evangelista

