

Lib

RECEIVED

224-201052-

98 MAY -4 AM 11:37

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

LICENSE AND CONCESSION AGREEMENT

Between

PORT OF OAKLAND

And

MARINE TERMINALS CORPORATION,
a California corporation

Dated

February 17, 1998

MARINE TERMINALS CORPORATION,
a California corporation
License and Concession Agreement



TABLE OF CONTENTS

1. <u>Army Lease and Description of Premises</u>	1
1.1	1
1.2	2
2. <u>Term</u>	2
3. <u>Rental; Rental and Performance Deposit</u>	2
4. <u>Use of Premises</u>	5
5. <u>Vending Machines</u>	6
6. <u>Commercial Charges</u>	6
7. <u>Taxes and Assessments</u>	6
8. <u>Signs</u>	7
9. <u>Promotion and Port in General</u>	7
10. <u>Condition of Premises</u>	7
11. <u>Repairs, Alterations and Additions</u>	8
12. <u>Title to Improvements</u>	10
13. <u>Liability for Damages</u>	10
14. <u>Liability Insurance</u>	11

15.	<u>Hazardous Substances</u>	12
16.	<u>Default</u>	13
17.	<u>Right of Entry as Agent</u>	14
18.	<u>Surrender and Holding Over</u>	14
19.	<u>Destruction of Premises</u>	16
20.	<u>Duty to Guard Goods</u>	16
21.	<u>Waivers</u>	16
22.	<u>Assignment and Sublease Prohibited</u>	17
23.	<u>Right to Inspect Premises</u>	18
24.	<u>Premises to be Kept Clean</u>	19
25.	<u>Fire Extinguishers</u>	19
26.	<u>Equal Opportunity; Nondiscrimination</u>	19
27.	<u>Employment Resources Development Program</u>	22
28.	<u>Utilities</u>	23
29.	<u>No Relocation Assistance or Benefits</u>	24
30.	<u>Attorneys' Fees and Costs</u>	24
31.	<u>Termination</u>	25

32.	<u>Successors</u>	25
33.	<u>No Interest in Land Created</u>	25
34.	<u>Time of Essence</u>	25
35.	<u>Notice</u>	25
36.	<u>Smoking Restricted</u>	26
37.	<u>Business Practice</u>	26
38.	<u>Abatement of Noise</u>	26
39.	<u>Data to be Furnished</u>	26
40.	<u>Right of Revocation</u>	26
41.	<u>Suspension and Abatement</u>	26
42.	<u>Security</u>	27
43.	<u>Limited Use and Access</u>	27
44.	<u>Reservation of Rights</u>	27
45.	<u>Agreement in Multiple Copies</u>	27
46.	<u>Additional Provisions</u>	28
47.	<u>Toxic Materials</u>	28
	(a) <u>General</u>	28
	(b) <u>Compliance With Laws</u>	29
	(c) <u>Disclosure</u>	31

(d) <u>Business Plan</u>	31
(e) <u>Indemnity</u>	31
(f) <u>Cleanup</u>	32
(g) <u>Notices and Consent</u>	33
(h) <u>Storage and Use of Toxic Materials</u>	33
(i) <u>Disposal of Toxic Materials</u>	34
(j) <u>Safety</u>	34
(k) <u>Fees, Taxes and Fines</u>	34
(l) <u>Delivery of Documentation</u>	35
(m) <u>Expiration of Term of License and Concession Agreement</u>	36
(n) <u>Prohibited Substances</u>	38
48. <u>Modifications</u>	38
49. <u>Covenant Against Contingent Fees</u>	39
EXHIBIT "A\	42
EXHIBIT "B-1\	43
EXHIBIT "B-2\	44
EXHIBIT "C\	45
<u>EXHIBIT "D\</u>	46
EXHIBIT "E\	49
EXHIBIT "F\	53
EXHIBIT "G\	54
EXHIBIT "H\	55
EXHIBIT "I\	57

EXHIBIT "J\ 58

EXHIBIT "K\ 62

PORT OF OAKLAND

BOARD OF PORT COMMISSIONERS

License and Concession Agreement

THIS AGREEMENT, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners, herein referred to as the "Port of Oakland" or the "Port", and licensee (Exhibit "A"), herein referred to as the "Licensee",

W I T N E S S E T H:

For the better promotion of commerce and navigation and the development of the Port of Oakland, and on the condition of the faithful performance by Licensee of the terms, conditions and agreements hereinafter set forth, the Port hereby assigns to Licensee and Licensee hereby accepts the license, concession and privilege to use, solely for the purposes hereinafter set forth, those premises consisting of Wharf 7 and adjacent area at the Oakland Army Base in the City of Oakland, County of Alameda, State of California, leased by the Secretary of the Army to the Port and hereby sub-licensed to Licensee, more particularly described as follows:

1. Army Lease and Description of Premises:

1.1. The Port is the Lessee pursuant to a Lease agreement between the Port and the United States Secretary of the Army covering the premises (the "Army Lease"; see Exhibit "J", §1, attached hereto). Licensee acknowledges and agrees that Licensee's rights hereunder are subordinate to the Army Lease and the power and authority of the United States of America to use the premises in the event of a forces deployment or national

emergency. Licensee shall be bound by all the terms and conditions of the Army Lease applicable to the premises licensed hereunder, including, without limitation, the Army's right to use the premises under surge conditions. In the event of a conflict between this Agreement and the Army Lease, the Army Lease shall prevail.

1.2. The description of the premises is set forth on Exhibit "B-1". A sketch of the premises is attached hereto as Exhibit "B-2".

2. Term: The term of this license as set forth on Exhibit "C".

3. Rental; Rental and Performance Deposit: Licensee shall, not later than the date of the commencement of the term of this agreement, deposit with the Port and during the entire agreement shall maintain with the Port a deposit as specified on Exhibit "D" which deposit will be retained by the Port as a performance deposit and will be returned to Licensee at the termination of its occupancy hereunder or under any renewal or extension hereof only if said performance deposit or portions thereof are not required to pay the cost of the following: Restoration and cleaning of the said premises to restore them to the condition required under Paragraph 18 of this agreement; repair of any damage to the premises caused by Licensee's occupancy; replacement of any improvements which are the property of the Port and which have been removed or otherwise misplaced during the term of this agreement; and the payment of any other outstanding charges incurred by Licensee to the Port pursuant to any of the provisions of this agreement. In the event the Port is required to utilize said deposit or any portion thereof during the term of this agreement for the purposes hereinabove set forth, Licensee shall deposit with the Port an additional sum sufficient to restore the performance deposit to the amount hereinabove set forth. Said performance deposit or any remaining portion thereof shall be returned to Licensee at the termination of this agreement after deduction of any amounts therefrom for payment of the hereinabove described charges. The payment of said performance deposit by Licensee shall not limit Licensee's liability to the

Port for the payment of charges due the Port by Licensee in excess of the amount of said deposit. The Port, however, at the request of Licensee and at the Port's sole discretion, may elect to accept, in lieu of said cash performance deposit provided for hereinabove, such other security that the Port may determine to be substantially equivalent to or a satisfactory substitute for said cash performance deposit.

In the event Licensee has another agreement or other agreements with the Port that requires or require Licensee to maintain a deposit with the Port, Licensee at its election may satisfy the deposit requirements for this and any other agreement or agreements with a single non-cash deposit acceptable to the Port, provided, however, that each of the following conditions and provisions shall apply:

1. The deposit instrument on its face expressly shall describe with specificity and certainty each and every agreement to which it is intended to apply and it shall apply only to those described agreements and to no other agreement.

2. The deposit shall be of an amount equal to not less than the aggregate of the deposit requirement for all of the agreements to which the deposit applies.

3. If the deposit is or becomes insufficient to satisfy the requirements of any agreement to which it is stated to apply, Licensee acknowledges and agrees that Licensee shall be in default of each and every agreement to which the deposit applies.

4. If Licensee defaults under any agreement to which the deposit applies the Port may apply up to the full amount of the deposit to compensate the Port for the default.

As monthly rental Licensee agrees to pay in lawful money of the United States of America, in advance and without abatement, deduction, offset or previous demand, as set forth on Exhibit "D" and a like amount on the first day of each and every calendar month thereafter to and including the termination date of this License Agreement as set forth on Exhibit "C".

If the above stated date that monthly rental payments shall commence is other than the first day of the calendar month, or if the term expires on a date other than the expiration of a calendar month and Licensee quits and surrenders the premises in compliance with this agreement, then the first monthly rental payment and the last monthly rental payment, respectively, shall be appropriately prorated.

Any monthly rental or other sum (which sum Licensee agrees is rent that Licensee shall pay in addition to monthly rental) that remains due and unpaid under the terms of this agreement for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge, for violation of this agreement and for damages, of Twenty-Five Dollars (\$25.00), plus a sum equal to five one-hundredths of one percent (.05%) of said rental or said other sum per day for each day from the date such rental or such other sum became due and payable until payment of said rental or said other sum has been received by the Port. Unpaid delinquency charges that accrue shall be compounded monthly. The Port shall apply any moneys received from Licensee first to any accrued delinquency charges and then to any other rental or other sums then due. The delinquency charges provided by this paragraph are in addition to all other remedies that the Port may have that are provided by this agreement or otherwise by law to enforce payment of any rental or other sum that has become due and has not been paid.

No payment by Licensee or receipt by the Port of a lesser amount of monthly rent or any other sum due hereunder shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and the Port may accept such check or payment and pursue any other remedy available in this agreement, at law or in equity. The Port may accept any partial payment from Licensee without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required to be

given pursuant to California Code of Civil Procedure Section 1161, et seq., or of any successor statute thereto.

4. Use of Premises: Except with the prior written consent of the Port, Licensee's use of the described premises shall be restricted to the following purposes: as set forth on Exhibit "E".

Any use inconsistent with the above purposes, or failure of the Licensee to use the described premises for the purposes expressed for a period of thirty (30) days, shall render this agreement immediately revocable at the will of the Port. It is understood and agreed that the use of said premises for residence or dwelling purposes is prohibited. Licensee shall not occupy, use or appropriate any space, premises or land not specifically assigned to Licensee by this agreement except with the prior written consent of the Port; and if without such consent Licensee shall occupy, use or appropriate any such space, premises or land, it shall pay forthwith to the Port the reasonable rental value thereof and on failure to do so, the Port may at its option immediately declare a forfeiture of this agreement and of any rights that Licensee may have in or to the assigned premises or rights created hereby.

Licensee shall not use or permit said premises to be used in whole or in part during the term of this agreement for any purpose or use in violation of any present or future laws, ordinances and general rules or regulations at any time applicable thereto of any public or governmental authority, including without limitation the City of Oakland, the Port, the Bay Area Air Pollution Control District, the San Francisco Bay Conservation and Development Commission, and the Secretary of the Army, relating to sanitation, air pollution control, discharges in or fill of water areas, the public health, safety or welfare; and Licensee hereby expressly agrees at all times during the term of this agreement, at its own cost, to maintain said premises in a clean, wholesome and sanitary condition and in compliance with any and all present and future laws, ordinances and general rules or regulations of any public or governmental authority now or at any time during the term of this agreement in force relating to sanitation or public

health, safety or welfare; and Licensee shall at all times faithfully obey and comply with all laws, rules and regulations adopted by federal, state, local or other governmental bodies for the protection and governing of the premises.

Licensee agrees to indemnify and save harmless the Port and Port officers, employees and agents from any penalties, damages and charges (and including, without limitation, attorneys' fees and legal expenses incurred by the Port in connection with such penalties, damages or charges and proceedings whether or not any such penalties, damages or charges are actually imposed) imposed or sought to be imposed on or involving the Port for any violation of any and all laws, ordinances and regulations applicable to Licensee's use of the premises, including laws and regulations regarding disabled or handicapped persons, including without limitation the Americans With Disabilities Act of 1990, or applicable to the wrongful acts or omissions by Licensee or by Licensee's licensees or invitees in relation to Licensee's use of the premises.

5. Vending Machines: As described on Exhibit "F".

6. Commercial Charges: [OMITTED]

7. Taxes and Assessments: This agreement may create a possessory interest subject to property taxation, and the Licensee hereunder in whom such possessory interest is vested may be subject to payment of property taxes levied on such interest.

Licensee agrees to pay all lawful taxes, assessments or charges which during the term hereof may become a lien or be levied by the state, county, city or any other tax or assessment levying body upon any interest in this agreement or any possessory right which Licensee may have in or to said land and/or the improvements thereon by reason of its use or occupation thereof, or otherwise, as well as all taxes, assessments and charges on any activity conducted by Licensee on the premises, and on goods, merchandise, fixtures, appliances, equipment and property owned by it in and about said premises.

Licensee may at no cost to the Port reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Licensee is responsible under this agreement, and institute such proceedings as Licensee considers necessary; provided, however, that Licensee agrees that Licensee at all times shall protect the Port and the premises from foreclosure of any lien, and that the Port shall not be required to join in any proceeding or contest brought by Licensee.

8. **Signs:** Licensee shall not install, paint, inscribe or place any signs or placards either in or upon the said premises without the prior written consent of the Executive Director of the Port or his authorized representative. Licensee agrees, at its own expense, to remove or paint over, to the satisfaction of the Port, promptly upon termination of this agreement, any and all signs or placards installed, painted, inscribed or placed by it upon said premises; and should Licensee fail to so remove or paint over such signs or placards, the Port may do so at the expense of Licensee, and Licensee shall reimburse the Port for the cost thereof upon demand.

9. **Promotion and Port in General:** Licensee shall in good faith and with all reasonable diligence employ its best endeavors and all practical means to promote and aid the development of the Port in general.

10. **Condition of Premises:** The taking of possession of said premises by Licensee shall, in itself, constitute acknowledgment by Licensee that said premises are in good condition and satisfactory for its use, and that the Port has not agreed to undertake any modifications, alterations or improvements to the premises except as specifically provided in this agreement.

Licensee specifically acknowledges that except as otherwise may be expressly provided herein the Port has made no representations concerning the condition of the premises or any improvements and/or the fitness of the premises or any improvements for Licensee's intended use, and/or the compliance of the premises and/or any improvements with any federal, state, or local building code or ordinance or with any laws or regulations

or guidelines regarding disabled or handicapped persons, including without limitation the Americans With Disabilities Act of 1990, and Licensee expressly waives any duty which the Port might have to make any such disclosures. Licensee agrees that Licensee shall be solely responsible to take all actions that may be necessary to comply with any such code, ordinance, law or regulation in connection with Licensee's use or occupation of the premises. Licensee further agrees that, in the event Licensee sublicenses all or any portion of the premises or assigns its interest in the License and Concession Agreement, Licensee will indemnify and defend the Port for, from and against any matters which arise as a result of Licensee's failure to disclose any relevant information about the premises to any subtenant or assignee.

11. Repairs, Alterations and Additions: Licensee shall at its sole cost, keep and maintain said premises and appurtenances and every part thereof including, but not limited to, all windows and other glass, doors, and skylights, and the interior of the premises, in good and sanitary order, condition and repair. The Port shall have no responsibility or obligation whatsoever for any repair, alteration, modification or maintenance of the premises or any property or improvement adjacent to the premises, whether the same are required to comply with codes, ordinances, laws or regulations or for any other reason.

If the need for repair or maintenance of exterior walls and roofs is caused in part or in whole by the act, neglect, fault or omission of any duty by Licensee, its agents, officers, employees, contractors, invitees or guests, Licensee shall pay to the Port the Port's cost of maintenance or repairs. The Port shall not be liable for any failure to make any such repairs or perform any maintenance for which Port is responsible as provided above unless such failure shall persist for an unreasonable time after the written notice of the need of such repairs and maintenance is given to the Port by Licensee and is due solely to causes within the Port's reasonable control. The Port shall not be liable for any damage or loss to any property on the licensed premises, or any loss of business by Licensee, which arises out of any need for repair or maintenance of the licensed premises.

Should Licensee fail to make any repairs for which it is liable, the Port shall have the option to make the same; and Licensee shall immediately reimburse the Port for the cost thereof. The making of such repairs by the Port shall in no event be construed as a waiver of the duty of Licensee to make repairs as herein provided. Licensee may make alterations, additions and betterments to said premises only with the prior written approval of the Port and upon first securing at its own cost all necessary approvals and permits, including, without limitation, necessary building, electrical or plumbing permits from the City of Oakland. Licensee shall not paint said premises or any portions thereof without the prior written approval of the Executive Director of the Port with respect to the method and color of such painting. Licensee waives the right to make repairs at the expense of the Port and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto; and further agrees that if and when any repairs, alterations, additions, or betterments shall be made by it as in this paragraph provided, it promptly shall pay for all labor done or materials furnished in that behalf and shall keep said premises and building and Licensee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever.

The layout, specifications, detailed plans and architectural plans of all improvements to be constructed upon the premises and adjacent thereto shall be subject to the prior written approval of the Port. Licensee warrants that the proposed improvements if constructed or installed consistently with the plans and specifications will comply with all laws and regulations regarding disabled or handicapped persons, including without limitation the Americans With Disabilities Act of 1990. In addition, construction or installation of improvements shall not commence unless and until Licensee, or its licensed contractor, shall have secured, at no cost to the Port, all other necessary permits, including, but not limited to, building permits and any necessary approvals and permits from the San Francisco Bay Conservation and Development Commission. Licensee agrees to comply with all terms and conditions of permits whether secured by Licensee or the Port.

All repairs, modifications alterations or additions to the premises by Licensee shall be made in accordance with and shall comply with the requirements of all applicable laws, regulations, ordinances and permits.

12. Title to Improvements: Licensee agrees that all structures, locks, bolts, repairs, alterations, equipment and/or improvements affixed to or made upon said premises by either of the parties hereto, shall be and become the property of the Port, and shall remain upon and be surrendered with the premises as part thereof upon termination of this agreement, save that Licensee may at the termination of this agreement, if Licensee is not in default under any of the provisions of this agreement, and if the premises are restored to their original or to a better condition, remove its machinery, boilers, tanks (excepting sprinkler systems and tanks used therewith and fixed fire protection apparatus), apparatus, conveyors, movable partitions and other trade fixtures heretofore and/or hereafter placed thereon by it; provided, the provisions of this paragraph may be waived by resolution of the Board upon application prior to the making of any such improvements.

Upon Licensee's completion of any improvements within the premises, Licensee shall submit to the Port a copy of any certificate or permit which may be required by any federal, state, city or other governmental agency in connection with the completion or occupancy of said improvements by Licensee. Licensee shall furnish to the Port a set of reproducible, final "AS BUILT" drawings of any and all such improvements not later than 90 days following the completion, occupancy or initial use of such improvements by Licensee, whichever comes first.

13. Liability for Damages: This agreement is made upon the express condition that the Port, and members of the Board of Port Commissioners and its officers, agents and employees, shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or death or deaths of any person or persons or damages to property of any kind whatsoever, whether the person or property of Licensee, its agents or employees, its sublicensees, sublessees or

concessionaires or third persons, from any cause or causes whatsoever while said person or property is in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by Licensee, its sublicensees, sublessees or concessionaires in connection therewith, or from the alleged violation of any civil rights act, including acts regarding disabled or handicapped persons, including without limitation, the Americans With Disabilities Act of 1990, and Licensee hereby covenants and agrees to indemnify and to save harmless the Port, and members of the Board of Port Commissioners and its officers, agents and employees, from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such injury or injuries, death or deaths, liabilities, claims, suits or losses, however occurring or damages growing out of same, except to the extent that the same is caused solely by the negligence, or other wrongful conduct of the Port. The foregoing provisions of this Paragraph are not intended to and shall not be construed to limit the protections otherwise provided to the Port as an additional insured under any liability insurance or self insurance retention required to be maintained by Licensee under this Agreement. Defense counsel retained by Licensee under this License and Concession Agreement shall be subject to the Port Attorney's reasonable approval.

14. Liability Insurance: Insurance limits/requirements as set forth on Exhibit "H".

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

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

The Licensee's insurance coverage shall be primary insurance as respects the Port of Oakland, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Port of Oakland, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

An originally executed certificate(s) or endorsement(s) evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of this license agreement and said certificate shall provide that such insurance coverage will not be canceled or materially changed without at least thirty (30) days' prior written notice to the Secretary of said Board. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is canceled or reduced, Licensee shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction of coverage, but in no event later than the date of such cancellation or reduction, file with the Secretary of said Board a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the Port may without further notice and at its option, either (1) notwithstanding the provisions of Paragraph 16 of this agreement cause this agreement to be forfeited as provided in Paragraph 16 and exercise such other rights as it may have in the event of Licensee's default, or (2) procure such insurance coverage at Licensee's expense and Licensee shall promptly reimburse the Port for such expense.

15. Hazardous Substances: No goods, merchandise or material shall be kept, stored or sold in said premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said premises other than as is provided for in Paragraph 4 of this agreement which will increase the rate of or suspend the insurance upon the structures

hereby assigned to Licensee or upon adjacent buildings or other structures of the Port, and no machinery or apparatus shall be used or operated on said assigned premises which will in any way injure said premises or adjacent buildings; provided, however, that nothing in this Paragraph 15 shall preclude Licensee from bringing, keeping or using on or about said premises and buildings such materials, supplies, equipment and machinery as are necessary or customary in carrying out the uses mentioned in Paragraph 4 hereof. In the event such uses include the keeping or storage of inflammable or explosive substances, such substances shall be stored in closed containers, and shall be stored, used or dispensed in the manner prescribed by the regulations of the Board of Port Commissioners, the Fire Prevention Bureau of the City of Oakland, or other public body having authority in the matter, and in any event, in the safest possible manner.

16. Default: It is mutually covenanted, and this agreement is made upon the condition, that if the rents or other sums which Licensee herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in all or any of the other terms, agreements, conditions or covenants herein contained on the part of Licensee, or should Licensee abandon and cease to use the premises for a period of thirty (30) days at any one time, except when prevented by fire, earthquake, war, strikes, or other calamity beyond its control, then and in any such event, at its option the Port may declare this agreement forfeited, whereupon all improvements of every kind and description shall, at the option of the Port, be forfeited to and become the property of the Port, and the Port may exercise all rights of entry or reentry upon said premises. No forfeiture shall be declared by the Port unless and until not less than fifteen (15) days' written notice of failure of Licensee to perform any such term, agreement, condition or covenant shall have been given by the Port to Licensee, and no forfeiture of said agreement for any such default by Licensee shall be declared by the Port if such default shall have been cured or obviated prior to the expiration of such notice, even though performance of such term, agreement, condition or covenant shall not have been effected or completed strictly within the period during which same should have been effected or completed; provided, that only three

(3) days' notice need be given of forfeitures declared for breaches of Paragraphs 3, 4, 6 and 28 hereof.

17. Right of Entry as Agent: In any and all cases in which provision is made herein for termination of this agreement, except by forfeiture, or for exercise by the Port of right of entry or reentry upon said premises, or in case of abandonment or vacating of the premises by Licensee, and the Port may not elect to invoke a forfeiture of said agreement, Licensee hereby irrevocably appoints the Port the agent of Licensee to enter upon said premises and remove any and all persons and/or property whatsoever situated upon said premises, and place all or any portion of said property, except such property as may be forfeited to the Port, in storage for account of and at expense of Licensee; and in such case the Port may relet the premises upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying expenses of such reletting and collecting to satisfy the rent and other sums herein reserved to be paid, Licensee agrees to satisfy and pay any deficiency, and to pay expenses of such reletting and collecting. Licensee hereby exempts and agrees to save harmless the Port from any cost, loss or damage arising out of or caused by any such entry or reentry upon said premises and/or the removal of persons and/or property and storage of such property by the Port or its agents.

18. Surrender and Holding Over: Licensee covenants that at the expiration of the term of this agreement, any Port approved extension thereof, any holding over that the Port or the Port's Director of Maritime has not otherwise objected to, or upon this agreement's earlier termination, Licensee will quit and surrender said premises in good state and condition, reasonable wear and tear and damage by the elements excepted, and Licensee agrees forthwith to remove therefrom all machinery, apparatus, boilers, tanks (excepting sprinkler tanks), equipment, conveyors, trade fixtures and personal property belonging to Licensee. Licensee further covenants and agrees that said premises and all structures, foundations and improvements thereon which by and under the terms of this agreement are provided to then remain on the assigned premises and which have become the property of the Port's Licensor, shall be well and sufficiently repaired and in

good tenantable order and condition, with allowance for reasonable wear and tear, and the Port shall have the right on such termination, to enter upon and take possession of all said premises.

If the Port or the Port's Director of Maritime has not otherwise objected to Licensee's holding over the use of said premises after the term of this agreement has terminated in any manner, such holding over shall be deemed merely a holding from month-to-month on the same terms and conditions as herein provided except as follows:

a. Compensation

(i) **Port Ordinance**. Compensation payable by Licensee to the Port during any such holding over shall be the compensation that is established from time-to-time by Port Ordinance for a particular annual period of holding over. If compensation for the premises is covered by a Port Ordinance, subsections (ii) immediately below shall not apply.

(ii) **Fixed by Port**. Compensation which is not otherwise fixed by Port Ordinance for any such holding over may be fixed by the Port from time-to-time by giving to Licensee written notice thereof at any time not less than 7 days before the expiration of any such month, to be effective upon the expiration of such month.

b. Holdover Terms Other Than Monthly Rental

In addition to subsection a. above, the Port, upon 30 days written notice to Licensee, may change any of the other terms and conditions of the holding over.

c. Director of Maritime's Authority to Change Holdover Terms

The Port's Director of Maritime may act on behalf of the Port to change any of the terms and conditions of the holding over except for monthly rental covered by a Port Ordinance, decreases in monthly rental below what monthly rental would have

been under the CPI process as described in subsection a (ii) above, and changes in Licensee's permitted use of the premises.

19. **Destruction of Premises:** Whenever the premises, or any essential part thereof shall be destroyed by fire or other casualty, this agreement shall in case of total destruction terminate, and in case of partial destruction or injury, shall terminate at the option of the Port, upon giving at least thirty (30) days' notice to Licensee after such fire or injury, and no rent shall accrue to the Port after such termination. Should the Port elect, in such event, not to terminate such agreement, it will, with reasonable diligence, restore the premises as nearly as practicable to their former condition, and Licensee's obligation to pay rent shall be abated during the time and in proportion to the extent that said premises are not tenantable.

20. **Duty to Guard Goods:** Licensee shall assume the responsibility for the guarding and safekeeping of, and the risk of loss to, all property and equipment stored or located upon or used in connection with the said premises.

21. **Waivers:** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this agreement or of any default or forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the Port to reenter said premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by the Port shall be required to restore or revive time as of the essence hereof after waiver by the Port of default in one or more instances. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this agreement are cumulative, and no one of them shall be exclusive of the other or

exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

22. Assignment and Sublease Prohibited: Licensee shall not at any time, in any manner, either directly or indirectly, assign, hypothecate, encumber or transfer this agreement or any interest, right or privilege appurtenant thereto, or sublet, or license or suffer any other person to occupy, use or manage (except management by Licensee's employees or servants), the whole or any part of said premises.

Licensee further covenants and agrees that neither this agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Licensee, or in voluntary or involuntary proceedings taken under the authority of any bankruptcy act or provision thereof, or in any proceedings in insolvency or receivership taken by or against Licensee or by any process of law, and that possession of the whole or any part of said premises shall not be divested from Licensee in such proceedings or by any process of law, without the prior written consent of the Port; and any such divesting of possession by Licensee or any assignment, sale or transfer of this agreement, or any interest therein, either voluntarily or by judgment, execution, bankruptcy, arrangement, receivership, insolvency proceedings, or by process or operation of law, shall at the option of the Port be null and void and of no force or effect and shall cause this agreement to terminate immediately at the option of the Port.

A prohibited assignment within the meaning of this Paragraph 22 shall include, but is not limited to, the following: the incorporation of an individual licensee and the transfer of Licensee's rights hereunder to the corporation which is not wholly owned by Licensee; in the event that Licensee is a partnership, the incorporation of Licensee and transfer of Licensee's rights hereunder or the withdrawal or addition of any partner to Licensee's partnership; in the event that Licensee consists of co-licensees, the incorporation of Licensee and transfer of its rights hereunder to the corporation or the voluntary or

involuntary transfer by any one or more co-licensees of his or their rights hereunder to his, or their co-licensee or to a third person; in the event that Licensee is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Licensee; and, in the event that Licensee is an unincorporated association, the incorporation of Licensee and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

The Port's consent to any assignment, transfer, subletting or occupation or use shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to any subsequent assignment, transfer, subletting, or occupation or use by another person. Licensee agrees promptly to provide to the Port's Executive Director all documentation and information that the Executive Director reasonably may request in order for the Port to verify Licensee's compliance with this Paragraph 22.

Licensee agrees that its personal business skills and philosophy were an important inducement to the Port for entering into this License and Concession Agreement and that the Port may reasonably object to the transfer of the premises to another whose proposed use, while permitted by the use clause of this License and Concession Agreement, would involve a different quality, manner or type of business skills than that of Licensee, or which would result in the imposition upon the Port of any new or additional requirements under the provisions of any law or regulation, including any law or regulation regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

23. Right to Inspect Premises: The Port reserves the right to enter upon the premises at any reasonable time to inspect the same and to make any repairs that it may consider necessary to the preservation of the premises. Should any repairs be such as the Licensee should have made hereunder, the Licensee shall immediately reimburse the Port for the cost of such repairs, but the making of such repairs by the Port shall in no event be

construed as a waiver of the Port's right to require the Licensee to keep said premises in repair as herein provided.

24. **Premises to be Kept Clean:** Licensee at all times shall keep said premises in a neat, clean and orderly condition, and shall prevent the accumulation of and shall maintain said premises free of any weeds, refuse or waste materials which present an unattractive appearance or which might be or constitute a fire hazard, or the accumulation of which might increase the rates of or suspend existing fire insurance on said premises. If Licensee fails to maintain said premises free of any weeds, refuse or waste materials, the Port shall have the option to remove the same, and Licensee shall immediately reimburse the Port for the cost thereof. The performance of such removal by the Port shall in no event be construed as a waiver of the duty of Licensee to keep the premises clean as herein provided. Licensee's duty to keep the premises clean as set forth in this Paragraph 24 shall include the removal of weeds, refuse and waste materials which emanate from the licensed premises and scatter onto adjoining property.

25. **Fire Extinguishers:** Licensee agrees at its own expense to keep and maintain on the premises fire extinguishers and other portable firefighting and emergency equipment of such number, type and material as may be prescribed from time to time by the regulations of the Board of Port Commissioners, the Fire Prevention Bureau of the City of Oakland, or other competent authority.

26. **Equal Opportunity; Nondiscrimination:** In furtherance of the Port's long-standing policy to ensure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, Licensee for himself, his heirs, his personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to Licensee's activities upon the premises and as a covenant running with the land:

a. That Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived sexual orientation, national

origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status. Licensee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Employment Officer setting forth the provisions of this paragraph;

b. That Licensee shall, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status;

c. That Licensee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Employment Officer, advising the labor union or workers' representative of the Licensee's commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

d. That Licensee shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, actual or perceived sexual orientation, age, national origin, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the premises, including any and all services, privileges, accommodations, and activities provided thereby;

e. That Licensee shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Equal Opportunity Employment Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port;

f. That if Licensee has fifteen (15) or more employees, Licensee shall within ninety (90) days of the effective date of this agreement provide the Executive Director or his designee with a copy of its affirmative action program outlining the steps the tenant will undertake to promote effective utilization of minorities, women, handicapped persons, and veterans approved by an appropriate federal or state agency or by the Port or an affirmative action program required as a result of a court ordered consent decree. Thereafter any change(s) in the Licensee's affirmative action program shall be forwarded to the Port within thirty (30) days of its adoption. Such submissions shall be accorded the same level of confidentiality as provided for by the state or federal regulations or court order under which it was originally submitted;

g. That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color, national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

h. That Licensee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended;

i. That Licensee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed,

color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, as issued on February 7, 1980, or as subsequently amended by the United States Department of Transportation, Federal Aviation Administration. Licensee further assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Licensee assures that it will require that its covered suborganizations provide assurances to Licensee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect; and

j. That Licensee's noncompliance with the provision of this clause shall constitute a material breach of this agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port or the United States shall have the right to consider but not be limited to the following:

(i) The Port may terminate this agreement and re-enter and possess said land and the facilities thereon, and hold the same as if this agreement had never been made, without liability therefor; or

(ii) The Port or the United States may seek judicial enforcement of said covenants.

The Port shall assist Licensee in preparing the required affirmative action program to secure equal employment opportunities whenever such assistance would be beneficial, and shall be available to advise and counsel Licensee in the implementation of Licensee's Affirmative Action Program.

27. Employment Resources Development Program: It is further expressly understood and agreed with respect to Licensee's activities upon the demised premises:

(1) That Licensee shall cooperate in implementing the goals of the Port's Employment Resources Development Program,

hereinafter called the "ERDP", as set forth in Port Resolution No. 26291, as amended. Licensee understands the Port's ERDP seeks to address the needs of Port tenants for a qualified work force and the needs of Oakland's chronically unemployed and underemployed for employment, by identifying employment opportunities, by providing employment training and counseling for persons seeking such opportunities and by facilitating the employment of those persons qualified to fill the jobs identified;

(2) That Licensee understands that cooperation in implementing the goals of the Port's ERDP involves considering Port ERDP referrals consistent with relevant state and federal antidiscrimination regulations seeking to ensure equal employment opportunity; and

(3) That Licensee shall provide copies of all solicitations or advertisements for employees placed by or on behalf of Licensee to the Port's Executive Director or his designee, so that the Port may assist in providing Licensee with the names of qualified unemployed and underemployed residents of Oakland and others, including minorities, women, physically handicapped persons, and veterans seeking such employment or training opportunities through the Port's ERDP efforts.

28. Utilities: Licensee shall pay for all water, gas, heat, electricity, fuel, power, telephone service, and other utilities, as well as janitor or watchman services and mechanical fire alarm or security services, which may be furnished to or used in or about said premises during the term of this license.

The Port reserves the right, but not the obligation, to be Licensee's sole provider of electricity, gas and/or water. In cases where arrangements have been made between Licensee and the Port for the Port to furnish and deliver gas, electricity or water, the Port will exercise reasonable diligence and care to furnish and deliver the same; provided, however, that the Port does not guarantee the continuity or sufficiency of such supply. The Port will not be liable for interruptions or shortages or insufficiency of supply or any loss or damage of any kind or character occasioned thereby if the same is caused by accident,

act of God, fire, strikes, riots, war, inability to secure a sufficient supply from the utility company furnishing the Port, or any other cause except such as arises from the Port's failure to exercise reasonable diligence. It is understood that Licensee shall take such steps as Licensee may consider necessary to protect Licensee's equipment from any damage that may be caused to such equipment in the event of failure or interruption of any such utility services. Whenever the Port shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity or water, or any thereof, but in all such cases reasonable notice of such suspension will be given to Licensee, and the making of such repairs or improvements will be prosecuted as rapidly as practicable and, if possible, so as to cause the least amount of inconvenience to Licensee.

29. No Relocation Assistance or Benefits: It is understood and agreed that nothing contained in this agreement shall give Licensee any right to occupy said premises at any time after expiration of the term of this agreement or its earlier termination, and that this agreement shall not create any right in Licensee for relocation assistance or payment from the Port upon the expiration of the term of this agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to Paragraph 18. Licensee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the term of this agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to Paragraph 18, and Licensee hereby waives and releases to the Port all rights, if any, to which Licensee may be entitled under said provisions or other laws or regulations.

30. Attorneys' Fees and Costs: If the Licensee or the Port commences any action or proceeding against the other arising out

of or in connection with this agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit. The Port shall also be entitled, at the election of the Port, to have and recover from Licensee all other reasonable costs and expenses associated with the Port's enforcement of the provisions of this agreement.

31. **Termination:** Licensee and the Port or the Port's Director of Maritime shall have the right to cancel and terminate this agreement by giving to the other party at least thirty (30) days' prior written notice of such proposed cancellation and termination; provided, however, that the Port, acting by and through its Director of Maritime or his designee, at its sole discretion, may, but shall not be required to, agree to accept an earlier date of cancellation and termination pursuant to receipt of a written notice from the Licensee.

32. **Successors:** Each of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the respective parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this agreement and in favor of either party, shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through Licensee in violation of the provisions of this agreement shall vest any rights in any such assignee or successor.

33. **No Interest in Land Created:** Licensee agrees that this agreement is a license and concession and not a lease and that no interest or estate in real property, or improvements thereon, is created hereby.

34. **Time of Essence:** Time is expressly declared to be of the essence of this agreement.

35. **Notice:** Any notice required or permitted to be given Licensee may be given to it by personal delivery or United States mail, postage prepaid, as specified on Exhibit "A".

Notice by such mail shall be deemed given and received on the earlier of the date of actual receipt and three (3) days after mailing. If Licensee gives notice in writing to the Port of any change in said address, then and in that event such notice shall be given to Licensee at the changed address specified in such notice.

36. Smoking Restricted: Licensee shall not indulge in, nor permit nor suffer others to indulge in, smoking in any open hangar space, nor at any place in the vicinity or within fifty (50) feet of explosive or inflammable substances; and any breach of the provisions of this paragraph shall vest in the Port the right to remove Licensee, and Licensee's agents and employees and any property from said premises.

37. Business Practice: Licensee's activity upon the assigned premises shall consist solely of automotive repair training. Licensee shall not engage in any commercial activity whatsoever on the Premises.

38. Abatement of Noise: Licensee shall conduct its operations on the assigned premises in such manner as will reduce to the minimum that is reasonably practicable considering the nature and extent of Licensee's operations the emanation from the assigned premises of dust, noise, vibration, movement of air fumes and odors so as not to interfere unreasonably with the use of adjoining premises.

39. Data to be Furnished: [OMITTED]

40. Right of Revocation: Whenever, in the judgment of the Board of Port Commissioners, it is deemed necessary or expedient for the better use of the premises, the Board may revoke this license, on thirty (30) days' written notice to Licensee.

41. Suspension and Abatement: It is understood and agreed that the United States Government has, and may hereafter acquire, additional rights relating to the use, operation and maintenance of the premises, and that this license shall be subordinate to such rights and to the provisions of any existing or future

agreement between the United States Government and the Port affecting said premises. In the event of exclusive or nonexclusive use of said premises by the United States Government in such manner as to restrict substantially or prevent Licensee's operations as contemplated under this license, then either the Port or Licensee, without liability in damages to the other therefor, may, by written notice to the other, declare this license suspended in whole or in part, with corresponding proportionate abatement in rent, for the duration of such restrictions or preventive government use.

42. **Security:** Licensee shall, at its own cost and expense, take whatever steps are reasonably necessary to prevent or deter persons and vehicles from unauthorized access to areas adjacent to the premises or from any area or through any entryway over which Licensee has control or temporary control, and shall take such further actions as may be required to insure compliance with all regulations of the United States Government or other governmental agencies having jurisdiction, including the Port, relative to security. Licensee at all times shall exercise control over any person or vehicle visiting the licensed premises or escorted by Licensee in the licensed premises, and all the provisions contained in Paragraph 13 of this agreement shall apply in respect to any act or omission of any said person or vehicle or any act or omission of any persons issued an access badge by or at the request of Licensee. Licensee shall promptly reimburse the Port the amount of any civil penalty or fine that may be assessed against the Port by any governmental agency for a violation of security rules or regulations which violation is caused by Licensee's failure to comply with this Paragraph 42.

43. **Limited Use and Access:** [OMITTED]

44. **Reservation of Rights:** [OMITTED]

45. **Agreement in Multiple Copies:** This agreement is executed in multiple copies, and each executed copy shall be deemed an original.

46. Additional Provisions: Prior to the execution of this agreement, the following Paragraphs of this preprinted agreement were deleted or modified as indicated on the face of this agreement: See Exhibit "J".

47. Toxic Materials

(a) General

Licensee shall not cause or permit any Toxic Materials (as hereinafter defined) to be brought upon, remain, kept or used in or about the Premises or other Port property, by Licensee, its agents, employees, contractors or invitees. The above prohibition does not apply to those substances specifically listed in Exhibit "K" hereto ("Listed Substances") ordinary office and janitorial supplies, to substances in cooling systems (e.g., refrigerators and air conditioning units), or to automobiles and the standard contents therein, used in the ordinary course of Licensee's permitted uses so long as such Listed Substances, supplies, substances and automobiles and standard contents therein are stored, used and disposed of in accordance with all other legal requirements ("Exempted Toxic Materials"); provided, however, that with respect to cooling systems and to automobiles and the standard contents therein, this sentence shall not apply to the storage or use of any Toxic Materials outside of a cooling system or an automobile. Licensee's obligations under the provisions in this Paragraph 47 shall apply notwithstanding the party, known or unknown, responsible for the Toxic Materials, except solely in the case where the Toxic Materials are brought upon the Premises by the Port or the Port's agents. Licensee shall be solely responsible to assure that no person brings Toxic Materials onto the Premises.

(1) Notwithstanding any other provision of this Paragraph 47 of this License and Concession Agreement, Licensee shall not be responsible for any Toxic Material (as hereinafter defined) that was on the Premises prior to Licensee's taking possession exception as follows: (A) Licensee shall be responsible for any such Toxic Material to the extent that the scope of contamination, or the cost of investigation, cleanup,

remediation or restoration, is increased as a result of Licensee's failure, after Licensee knows, or has a reasonable basis to believe, that Toxic Materials are on the Premises, promptly and reasonably to (i) notify the Port in writing of such Toxic Materials, or (ii) take precautionary measures to alter its operations and the activities of other parties on the Premises in order to assure that such operations or activities do not increase the scope of contamination or the cost of investigation, cleanup, remediation or restoration, or (iii) provide the Port prompt and adequate access to the Premises in order to undertake all investigation, cleanup, remediation or restoration activities; (B) Licensee shall be responsible for any such Toxic Materials on the Premises prior to Licensee's taking possession if such Toxic Materials were present on the Premises due to the negligent or intentional acts or omissions of Licensee; and (C) Licensee shall be responsible in accordance with subparagraph (2) below.

(2) Licensee shall be responsible for any Toxic Material that is discovered as the result of any excavation or other subsurface activity made or undertaken by Licensee, or Licensee's agents, employees, contractors, licensees or invitees, unless the Port has given to Licensee in writing prior approval for such excavation or subsurface activity.

(b) Compliance With Laws

Licensee shall comply, at its sole cost, with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any flammable, combustible, explosive, infectious, corrosive, caustic, irritant, strong sensitizing, carcinogenic or radioactive materials, hazardous wastes or toxic substances, including without limitation, all refined or unrefined, new or used, petroleum (including, without limitation, oil, gasoline, diesel, bunker oil, oil and grease and aviation gas) crude oil or any fraction thereof, natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), substances defined as "hazardous substances,"

"hazardous materials," "toxic substances" or "chemicals known to the state (of California) to cause cancer or reproductive toxicity" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300(f), et seq.; the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., as amended; those substances defined as "hazardous waste," "extremely hazardous waste," "restricted hazardous waste" or "hazardous substance" in the Hazardous Waste Control Act, §25100 et seq. of the California Health and Safety Code; and those materials and substances similarly described in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq., as amended; the Atomic Energy Act of 1954, 42 U.S.C. §2011 et seq., as amended; the Porter Cologne Water Quality Control Act, §13000 et seq. of the California Water Code; the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65); and in the regulations adopted and publications promulgated pursuant to said laws (hereinafter collectively referred to as the "Laws"). Such materials and substances are sometimes collectively referred to in the License and Concession Agreement, as "Toxic Materials." Licensee shall become aware of the content of such Laws and all other laws regulating Toxic Materials as enforced by, but not limited to, the Environmental Protection Agency, the California Environmental Protection Agency, the Bay Area Air Quality Management District, Alameda County Health Care Services Agency, Department of Environmental Health, California Regional Water Quality Control Board (San Francisco Region), California Department of Health Services and all state and federal offices enforcing regulations concerning occupational safety and health. It shall be the sole obligation of Licensee to obtain any permits and approvals required pursuant to the Laws.

(c) Disclosure

If Licensee is required under the Laws or any other federal, state or local laws concerning Toxic Materials, to make disclosures, or provide reports to federal, state or local agencies concerning Licensee's storage, use, generation or disposal of Toxic Materials, Licensee shall concurrently also provide a copy of such disclosures or reports to the Port.

(d) Business Plan

If Licensee's business conducted within the Premises requires the establishment and implementation of a business plan pursuant to California Health and Safety Code §25500 et seq. concerning the handling of hazardous materials, Licensee shall, prior to occupying the Premises, give written notification to Port that Licensee's business is subject to the business plan requirement of the Code and that the business is in compliance with the Code. A copy of the plan shall be delivered to Port with such notification. Licensee shall deliver to Port any revised and/or updated business plan.

(e) Indemnity

Licensee shall be solely responsible for and shall indemnify, protect, defend and hold harmless Port and its agents, employees, representatives, directors and officers (collectively hereinafter referred to as the "Indemnitees") from and against any and all claims, costs, penalties, fines, losses (including without limitation, (i) diminution in value of the Premises and of any other Port property; (ii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, or any other Port property; (iii) damages arising from any adverse impact on marketing of space in the Premises or other Port property; and (iv) sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees), liabilities, attorneys' fees, damages, injuries, causes of action, judgments, taxes and expenses which arise during or after the term of this License and Concession Agreement as a result of the receiving, handling, use, storage, accumulation, transportation, generation, spillage,

migration, discharge, release or disposal of Toxic Materials in, upon or about the Premises, or other Port property, by Licensee, or by Licensee's agents, employees, contractors, licensees or invitees or by any other persons (except Indemnitees) as a result of said parties' presence on the Premises during Licensee's occupancy of the Premises. This indemnification of the Indemnitees by Licensee includes, without limitation, any and all costs incurred in connection with any investigation of site conditions and any cleanup, remediation, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Toxic Materials present in the soil, subsoils, groundwater or elsewhere in, on, under or about the Premises or other Port property on account of such activities by Licensee or its agents, employees, contractors, licensees or invitees or such other parties. This indemnification by Licensee under this Paragraph shall survive the termination of this License and Concession Agreement. The Port shall give to Licensee reasonable notice of the Port's knowledge of Toxic Materials affecting the Premises, and the Port's knowledge of any third party's claim in relation thereto, for which Licensee may be responsible hereunder. In addition, the Port shall allow Licensee a reasonable opportunity promptly and diligently to provide all defense, cleanup, remediation, removal and restoration for which Licensee is responsible hereunder; provided, however, that all response actions, including investigation of site conditions, cleanup, remediation, removal and/or restoration work taken by Licensee or its agents, employees, representatives, directors and officers shall be with the prior approval in writing by Port.

(f) **Cleanup**

If Licensee, or Licensee's agents, employees, contractors, licensees or invitees, or any other persons (except the Indemnitees) as a result of said parties' presence in the Premises during Licensee's occupancy of the Premises, cause contamination or deterioration of water or soil or other portions of the Premises on account of Toxic Materials, then Licensee shall promptly take any and all action necessary to clean up such contamination or remediate such deterioration in any manner as required by law. Licensee shall provide Port with written

notification of all actions taken by Licensee, its agents, employees, representatives, directors and officers to cleanup such contamination. If Licensee fails to take such action after prior written notice from the Port, Port may, but shall not be obligated to, take such action. In such event, all costs incurred by Port with respect to such cleanup activities shall be for the account of Licensee. "Clean-up" as used herein, shall include investigation, feasibility studies, remediation and monitoring.

(g) Notices and Consent

In addition to Licensee's obligations to report spillage, discharge, release and disposal of Toxic Materials to local, state and federal agencies, Licensee shall immediately provide Port with telephonic notice, which shall later be confirmed by written notice, of any and all spillage, discharge, release and disposal of Toxic Materials onto or within the Premises or other Port property and any injuries or damages resulting directly or indirectly therefrom. Further, Licensee shall deliver to Port each and every notice or order received from governmental agencies concerning Toxic Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

(h) Storage and Use of Toxic Materials

Subject to the Permitted Uses as defined elsewhere in this License and Concession Agreement, Licensee shall store in a manner approved or prescribed by law and in accordance with any applicable conditions under this License and Concession Agreement, any and all Toxic Materials permitted within the Premises pursuant to this License and Concession Agreement, which if discharged or emitted into the atmosphere, upon the ground or into or on any body of water does or may (1) pollute or contaminate the same, or (2) adversely affect the (a) health, safety or welfare of persons, whether on the Premises or elsewhere, or (b) the condition, use or enjoyment of the Premises, or any real or personal property whether on the Premises or anywhere else. There shall be no ponding or surface storage whatsoever of Toxic Materials within the Premises or within any other Port property.

(i) **Disposal of Toxic Materials**

Notwithstanding anything to the contrary contained in this Paragraph 47 or elsewhere in the License and Concession Agreement, Licensee shall not dispose of any Toxic Material, regardless of the quantity or concentration, within the storm and/or sanitary sewer drains and plumbing facilities within the Premises, or other property of Port. The disposal of Toxic Material shall be in approved containers and removed from the Premises only by duly licensed carriers. If Licensee knows or has reasonable cause to believe that any release of a Toxic Material has come to be located on or beneath the Premises, Licensee within a reasonable period of time, either prior to the release or following the discovery of the presence or believed presence of the Toxic Material, shall give written notice of that condition to the Port.

(j) **Safety**

Licensee shall maintain Material Safety Data Sheets for each and every Toxic Material, product or material used by Licensee, its agents, employees, contractors, licensees, or invitees used on the Premises, as required under the Hazard Communication Standard in 29 CFR §1910.1200, and any comparable state or local statute or regulation. Such information shall be kept current at all times and shall be kept in a place accessible to Port at any time for inspection and in the event of emergency.

(k) **Fees, Taxes and Fines**

Licensee shall pay, prior to delinquency, any and all fees, taxes (including excise taxes) and fines which are charged upon or incident to any activities on or related to Toxic Materials for which Licensee is required to indemnify the Port under item (e) above, and shall not allow such obligations to become a lien or charge against the Premises or upon Port.

(1) Delivery of Documentation

Licensee shall maintain for periodic inspection by the Port and deliver to Port true and correct copies of the following documents (hereinafter referred to as the "Documents"), except for documents protected by the attorney-client privilege, related to the handling, storage, disposal and emission of Toxic Materials, concurrently with the receipt from or submission to a governmental agency:

Permits; approvals; reports and correspondence; storage and management plans; spill prevention control and countermeasure plans; other spill contingency and emergency response plans; documents relating to taxes for toxic materials; notice of violations of any Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Premises (provided, said installation of tanks shall only be permitted after Port has given Licensee its written consent to do so, which consent may be withheld in Port's sole discretion); and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks or other facilities installed in, on or under the Premises.

Licensee is not required, however, to provide Port with any portion(s) of the Documents containing information of a proprietary nature which, in and of itself, does not contain a reference to any Toxic Materials or hazardous activities which are not otherwise identified to Port in such Document, unless any such Document names Port as an "Owner" or "Operator" of the facility in which Licensee is conducting its business. It is not the intent of this paragraph, unless necessary for the Port to comply with the law or to enforce provisions of this License and Concession Agreement or otherwise secure the Port's rights, to provide Port with information which could be detrimental to Licensee's business should such information become possessed by Licensee's competitors.

(m) Expiration of Term of License and Concession Agreement

Licensee regularly shall monitor and inspect the Premises and all activities thereon with the objectives of discovering any Toxic Materials that Licensee is required under the terms of this License and Concession Agreement to remove upon expiration or termination of the License and Concession Agreement and of making reasonable and adequate provisions for assuring that removal is accomplished before such expiration or termination. In all cases where reasonably possible, before expiration or termination of this License and Concession Agreement, and in all other cases promptly after the scheduled date of expiration or termination of this License and Concession Agreement, Licensee shall take any and all action required to be taken under the Laws in order to (i) surrender the Premises to Port in a condition which would be completely free of any and all Toxic Materials, for which Licensee has clean-up responsibility under item (f) above, and (ii) close or remove, in accordance with law, any storage tanks in, on or under the Premises installed by Licensee or its agents, employees, contractors, licensees or invitees. Licensee shall submit to Port any and all closure plans relating to the closure or removal of any storage tanks as required by law. At least 90 days, but not more than 120 days, before expiration of the term of this License and Concession Agreement, or, in the event of earlier termination prior to the date of termination, Licensee shall give the Port written notice expressly referring to the provisions herein and stating Licensee's intention either to close or to remove any storage tank. The Port may elect by written notice to Licensee, given at any time not later than 30 days after receipt of notice of Licensee's intention, to require Licensee either (a) to remove said tank or (b) to leave the tank in place in operating condition; provided, however, that if the Port requires Licensee to leave the tank in place in operating condition, the Port shall indemnify, protect, defend and hold harmless Licensee and its agents, employees, contractors or invitees from and against any and all claims, costs, penalties, fines and losses concerning the tanks. If the Port gives no notice of election to Licensee during said 30-day period, Licensee

shall handle the tank in accordance with Licensee's intention as stated in its notice to the Port.

If Licensee does not surrender the Premises in the condition required and complete any required closure or removal of storage tanks before the scheduled date of expiration or termination of the License and Concession Agreement, then the Port shall have the option either (a) to extend this License and Concession Agreement for the period of time necessary for Licensee to bring the Premises to such condition and/or close or remove storage tank(s), subject, however, to Port's reserved right at the Port's election to terminate the License and Concession Agreement, as so extended, at any time upon at least 30-days prior written notice to Licensee, and Licensee diligently shall pursue to completion during such extension all work necessary to free the Premises of all Toxic Materials for which Licensee is responsible and/or to close or remove storage tank(s), or (b) not to extend the License and Concession Agreement, but in the event the Port either exercises its right to terminate any extended term or does not extend the License and Concession Agreement, Licensee shall remain obligated diligently to undertake and complete all work necessary to free the Premises of all Toxic Materials for which Licensee is responsible and/or to close or remove storage tank(s). Licensee shall notify the Port in writing promptly after Licensee becomes aware that Licensee likely will not complete required work before the scheduled date of expiration or termination. Absent contrary written notice from the Port to Licensee (whether or not Licensee has given the Port Licensee's said notice that Licensee likely will not timely complete said work), the Port shall be presumed to have elected to extend this License and Concession Agreement if Licensee has not completed said work.

In the event the License and Concession Agreement is extended pursuant to the foregoing provisions, then during the period of extension all of the terms of the License and Concession Agreement shall continue to apply except that the amount of any fixed monthly rent under the License and Concession Agreement may be increased by up to 50% by the Port effective 30 days after written notice by the Port to Licensee of the increase. The Port may increase the amount of any fixed monthly rental under the

License and Concession Agreement by up to 50% for each 6-month period, or portion of a 6-month period, that the term extends beyond the scheduled expiration or termination date. If the License and Concession Agreement is not extended, or if extended it subsequently is terminated by the Port, Licensee shall remain obligated diligently to pursue to completion all work necessary to free the Premises of all Toxic Materials for which Licensee is responsible and/or to close or remove storage tank(s), and until the completion of all of said work all of the indemnity, liability insurance and security/performance deposit provisions of this License and Concession Agreement shall continue to apply and shall be binding upon Licensee notwithstanding the expiration or termination of the License and Concession Agreement.

(n) **Prohibited Substances**

The following substances are prohibited from being brought into the Premises, the Building or onto the Improved Area except to the extent they are included as Exempted Toxic Materials under item (a) hereof because they are janitorial or office supplies, substances used in cooling systems (e.g., refrigerators and air conditioning units) or automobiles and the standard contents therein:

Arsines	Etching solutions
Asbestos	Fluorocarbons
Freon	Chlorinated Hydrocarbons

Dioxins, including dioxin precursors and intermediates. Anything contained in the California List of Extremely Hazardous Chemicals.

48. Modifications: Licensee agrees that the above written provisions of this License and Concession Agreement constitute the entire agreement between Licensee and the Port regarding the premises and the parties' rights and obligations with respect thereto. No representation, covenant or other matter, oral or written, that is not expressly set forth in this License and Concession Agreement, shall be a part of, modify or affect this

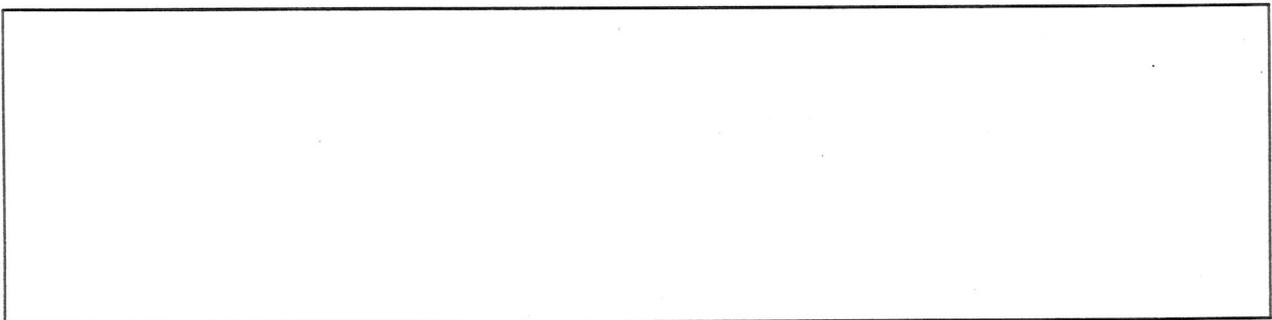
agreement; provided, however, that this agreement may be modified if the modification is in writing authorized by resolution or ordinance of the Board of Port Commissioners.

49. Covenant Against Contingent Fees: Licensee warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the contract or deduct from this Agreement price or otherwise recover from Licensee the full amount of the contingent fee.

"Bona fide agency," as used in this Paragraph means an established commercial or selling agency, maintained by Licensee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

"Bona fide employee," as used in this Paragraph, means a person, employed by Licensee and subject to Licensee's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

"Contingent Fee," as used in this Paragraph, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.



"Improper influence," as used in this Paragraph, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

IN WITNESS WHEREOF, the parties hereto thereunto duly authorized, have executed this agreement the day and year first above written.

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

By Raymond A. Boyle
Director of Maritime

MARINE TERMINALS CORPORATION,
a California corporation

By [Signature]
(Signature)
DOUGLAS A. TILDEN
PRESIDENT
(Print Name and Title)

Attest [Signature]
(Signature)
D.F. ADAM - EXEC. VICE PRESIDENT.
(Print Name and Title)

THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL IT IS SIGNED BY THE
PORT ATTORNEY.

Approved as to form and
legality this 6th day
of March 1998.



Asst. Port Attorney

Port Resolution No. 98078

EXHIBIT "A"

LICENSEE AND LICENSEE'S NOTICE ADDRESS

Date: This Agreement is dated as of February 17, 1998.

Licensee: Marine Terminals Corporation

Entity/Person(s): A California corporation

Notice Address: Marine Terminals Corporation
600 Harrison Street
Suite 200
San Francisco, CA 94107

EXHIBIT "B-1"

DESCRIPTION OF PREMISES

General Property Description of
Oakland Army Base Wharf 7 Area

An improved triangular-shaped parcel of land containing approximately 25 acres, plus adjacent vessel berthing area, located approximately 1,200 feet southwest of the I-80 toll plaza in Oakland, California generally bounded on one side by Burma Road to the North, and on two sides by the Oakland Outer Harbor in the San Francisco Bay.

R A N C I S C O

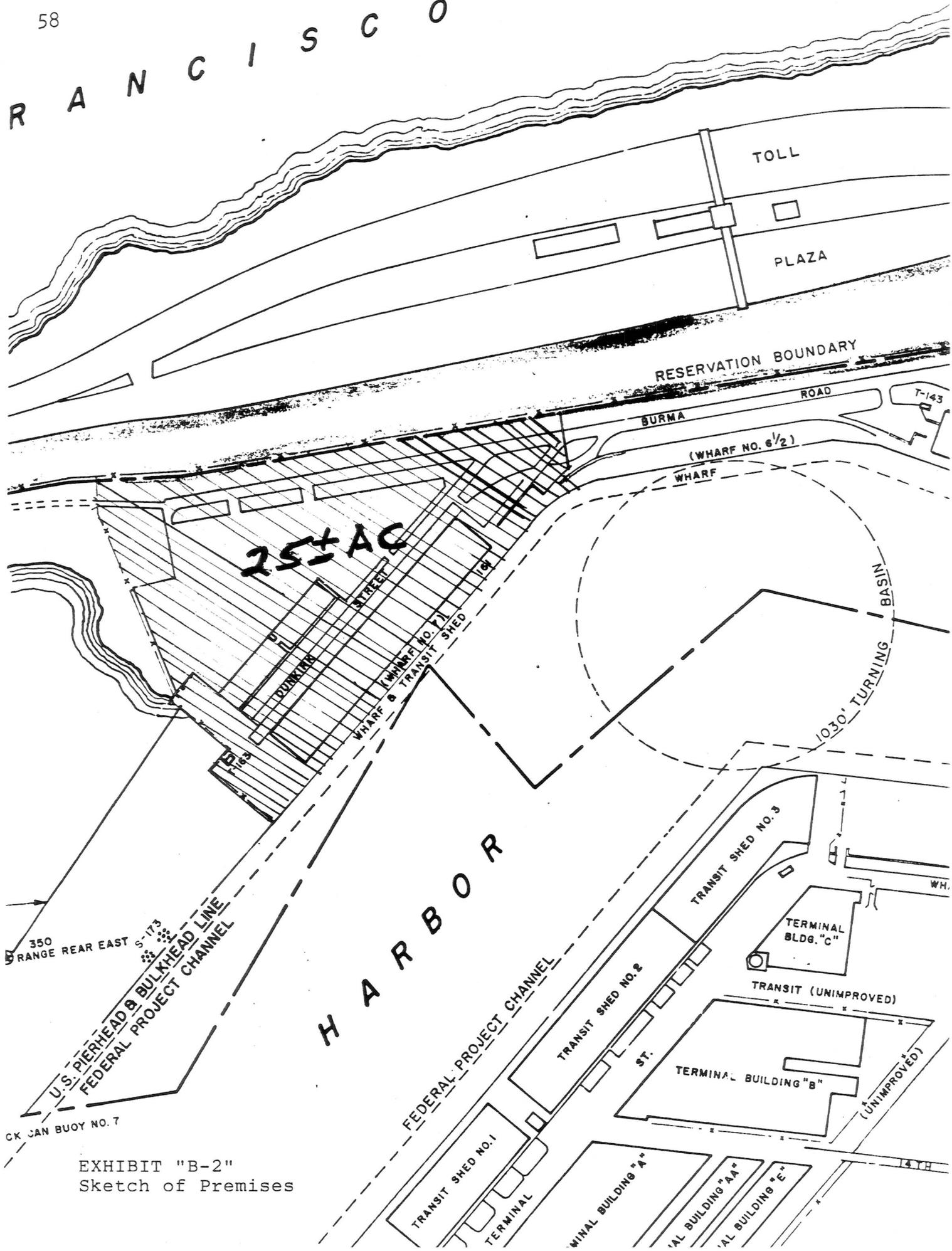


EXHIBIT "B-2"
Sketch of Premises

EXHIBIT "C"

TERM OF LICENSE AND CONCESSION AGREEMENT

TERM: This Agreement shall become effective upon the occurrence of all of the following events:

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

(b) The passage of a Port resolution authorizing execution of this Agreement.

The term of this Agreement shall commence upon the effective date of this Agreement and shall expire midnight, July 31, 1998; provided, that notwithstanding Paragraph 18 of this Agreement, if the Port by resolution authorizes Licensee's continued use of the premises after July 31, 1998, or the Port by resolution authorizes Licensee's continued use of the Premises after the expiration of any subsequent one year period, then Licensee's said continued use shall be on a one-year basis (commencing August 1) under this Agreement (but subject to the terms of the Army Lease), and notwithstanding Paragraph 18 of this Agreement compensation payable to the Port by Licensee for said one-year period shall be determined in accordance with Exhibit "D" of this Agreement. The date of commencement of the term of this agreement is herein referred to as the "Commencement Date."

EXHIBIT "D"

PERFORMANCE DEPOSIT; COMPENSATION

1. Performance Deposit: (\$-0-);
2. Compensation:

(a) Tariff Charges: As consideration to the Port for Licensee's use of the premises and for the benefits specified herein, and in addition to any compensation otherwise required under this Agreement, Licensee shall compensate the Port during the term of this Agreement in accordance with this Exhibit "D" (except as otherwise provided in Exhibit "C" hereof with respect to holding over on a month-to-month basis). Licensee shall pay to the Port, on a ship-by-ship basis, an amount equal to the dockage, wharfage, wharf demurrage, wharf storage and all other charges which accrue under the Port's Tariff then in effect, and in accordance with and subject to all of the applicable rules and regulations of said tariff, with respect to Licensee's use or operations at the premises for vessels berthed and for cargo loaded, discharged or held but, during the initial term of this Agreement and any one-year extension thereof approved by Port resolution, subject to the following conditions and limitations in this Section.

(b) Minimum Monthly Compensation: Licensee guarantees to the Port minimum monthly compensation (herein referred to as "MMC" or the "First Breakpoint") in the amount of \$46,000.00 for each calendar month of the term of this agreement, which shall be paid by Licensee to the Port within 15 days after the end of each such calendar month. In the event that for any calendar month the total compensation paid to the Port for the Port's Tariff charges accruing to the Port for dockage, wharfage, demurrage and wharf storage in connection with Licensee's use of the Premises is less than the MMC, Licensee shall pay to the Port within 15 days after the end of said month an additional sum equal to the difference between said accrued tariff charges for said month and the MMC.

(c) **Breakpoints:** Licensee shall be required to pay to the Port only 75% of the prevailing Port's Tariff charges accrued in connection with Licensee's use of the Premises in any calendar month which exceed the amount of the First Breakpoint, which shall be paid by Licensee to the Port within 15 days after the end of each such calendar month. Licensee shall be required to pay to the Port only 25% of the prevailing Port's Tariff Charges accrued in connection with Licensee's use of the Premises in any calendar month which exceed the amount of \$98,000.00 (herein referred to as the "Second Breakpoint"), which shall be paid by Licensee to the Port within 15 days after the end of each such calendar month.

The MMC, the First Breakpoint and the Second Breakpoint shall be increased effective the same date and in the same amount as any increase in the monthly rent charged the Army to the Port under the Army Lease for the Port's lease of the premises which are licensed to Licensee hereunder. It is understood that said increase may be retroactive to the Compensation Effective Date (as herein defined) of this Agreement.

Licensee may retain all charges Licensee receives for operation of the Army Crane on the licensed premises.

(d) **Effective Date of Compensation Provisions:** It is the intent of the parties hereto that the interests of the Port and Licensee with respect to the payment and receipt of compensation as described in this Agreement shall take effect February 19, 1998 (herein, the "Compensation Effective Date"). Accordingly, in the event this Agreement does not become effective on or before the Compensation Effective Date, not later than 90 days after the effective date of this Agreement, the parties shall mutually calculate the amount of compensation which would have been due and payable to the Port as if this Agreement had been in effect from and after the Compensation Effective Date. If the amount of said compensation calculated in accordance with this Agreement from and after said date is less than that which accrues in accordance with Licensee's prior assignment of the premises, the Port shall credit Licensee with the difference and said credit shall apply against compensation subsequently accruing under this Agreement.

(e) **Books and Reports:** Licensee shall keep full and accurate books, records and accounts relating to all its operations upon the premises assigned to Licensee, including without limitation the tonnage of revenue cargo handled and vessel occupancy of the berths and containers handled (loaded and empty), and the Port shall have the right and privilege through its representatives and at all reasonable times to inspect such books, records and accounts in order to verify the accuracy of the amounts of compensation due and owing to the Port hereunder, and Licensee agrees that such books, records and accounts shall be made available to the Port. If such books and records are not kept and maintained by Licensee within a radius of 50 miles from the offices of the Port at 530 Water Street, Oakland, California, Licensee shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said 50-mile radius or Licensee shall pay to the Port the reasonable and necessary costs incurred by the Port in inspecting Licensee's books and records, including but not limited to travel, lodging and subsistence costs.

(f) **Proration:** If the Compensation Effective Date of this Agreement or the termination date of this Agreement is before the end of a particular calendar month, the MMC, First Breakpoint and Second Breakpoint applicable during said calendar month shall be prorated to reflect the portion of the calendar month prior to said Compensation Effective Date or termination date. If the MMC, First Breakpoint or Second Breakpoint changes during a Calendar month, the MMC and Breakpoints before the change and the MMC and Breakpoints after the change each shall be prorated to reflect the portion of the calendar month that it was effective.

EXHIBIT "E"

USE OF PREMISES

(a) **Use:** Licensee shall use the licensed premises for docking and mooring of vessels for the loading, unloading, receipt, handling, storage, transporting and delivery of cargo and for uses incidental and reasonably related thereto.

The premises shall not be used for any other purpose, and specifically shall not be used for, among other things, retail, office (except incidental to said training uses), manufacturing or residential uses.

(b) **Port's Reserved Rights:** The Port reserves the right from time-to-time to use itself, or to authorize other parties to use under lease, license and concession agreement, or otherwise any portions of the licensed premises so long as such use does not unreasonably interfere with Licensee's operations, provided that Licensee shall be entitled to 30% of the net revenues received by the Port from third parties for said use.

(c) **Licensee's Rates, Charges and Practices:** Charges exacted by Licensee for dockage, wharfage, wharf demurrage and storage shall conform with like charges enacted by and published in the Port's Tariff, if any, applying at municipal terminals of the Port. To the extent permitted by law, the rates, charges, and practices of Licensee shall be subject to review and control by the Port.

It is understood and agreed that Licensee has no interest in the land and improvements comprising the Premises hereunder and is acting as licensee in the operation of the facilities upon said areas and Licensee shall not participate in revenues accruing under the Port's Traffic and derived from said premises and facilities except as hereinabove set forth in this Exhibit. Licensee shall be allowed to assess a reasonable charge to users of the said premises and facilities for services rendered by Licensee in the operation of said Premises, which service

charge shall be retained by Licensee. Licensee may also assess and retain charges for use of equipment, facilities and utilities furnished by Licensee for which charges are not included in the Port's Tariff.

It is understood and agreed by and between the parties hereto that the control reserved by the Port in this Exhibit with respect to the rates, charges and practices of Licensee shall not include the charge assessed against vessels, their owners, agents or operators which load or discharge cargo at the Premises for the use of terminal working areas in the receipt and deliver of cargo to and from the vessel and for services in connection with the receipt, delivery, checking care, custody and control of cargo required in the transfer of cargo (a) from vessels to consignees, their agents or connecting barrier, or (b) from shippers, their agents or connecting carriers, to vessels, commonly known and designated as "Service and Facilities Charge."

It is further understood and agreed that the Licensee shall not have the exclusive right to perform stevedoring services upon the Premises and that Licensee will permit any responsible person, firm or corporation to come upon the premises for the purpose of performing stevedoring operations when requested to do so by the steamship operator, master, agent, charterer or by the person legally responsible for the loading or unloading of vessels berthed at the Premises; provided, that such use by others shall not unreasonably interfere with operations of Licensee as herein authorized.

(d) **Clearing of Apron and Other Areas:** Upon the sailing of a vessel which has been berthed at the Premises pursuant to this Agreement and upon request of the Port on not less than 10 days' prior written notice, Licensee shall forthwith clear the apron of the wharf in front of the transit shed for its entire length and at the apron of the open wharf from the water-front edge of the wharf to a distance of not less than 50 feet back from the water-front edge of the wharf in order that such area shall be available for use in connection with cargo to be loaded or discharged from other vessels.

The storage by Licensee of pallet board, dunnage and other property not subject to wharf demurrage, storage or other tariff charges upon the Premises covered by this Agreement shall be limited to the amount actually necessary in the handling of ships at the berth. Such storage shall not interfere with other vessel operations of the Port or others, and the pallet boards and dunnage shall be removed by Licensee upon request of the Port.

The requirements of this paragraph (d) shall also be imposed upon any other stevedore operator upon the Premises pursuant to paragraph (c) hereof.

(e) **Load Limits:** Licensee shall not exceed the maximum allowable loads on the licensed premises as shown on attached Exhibit "E-1."

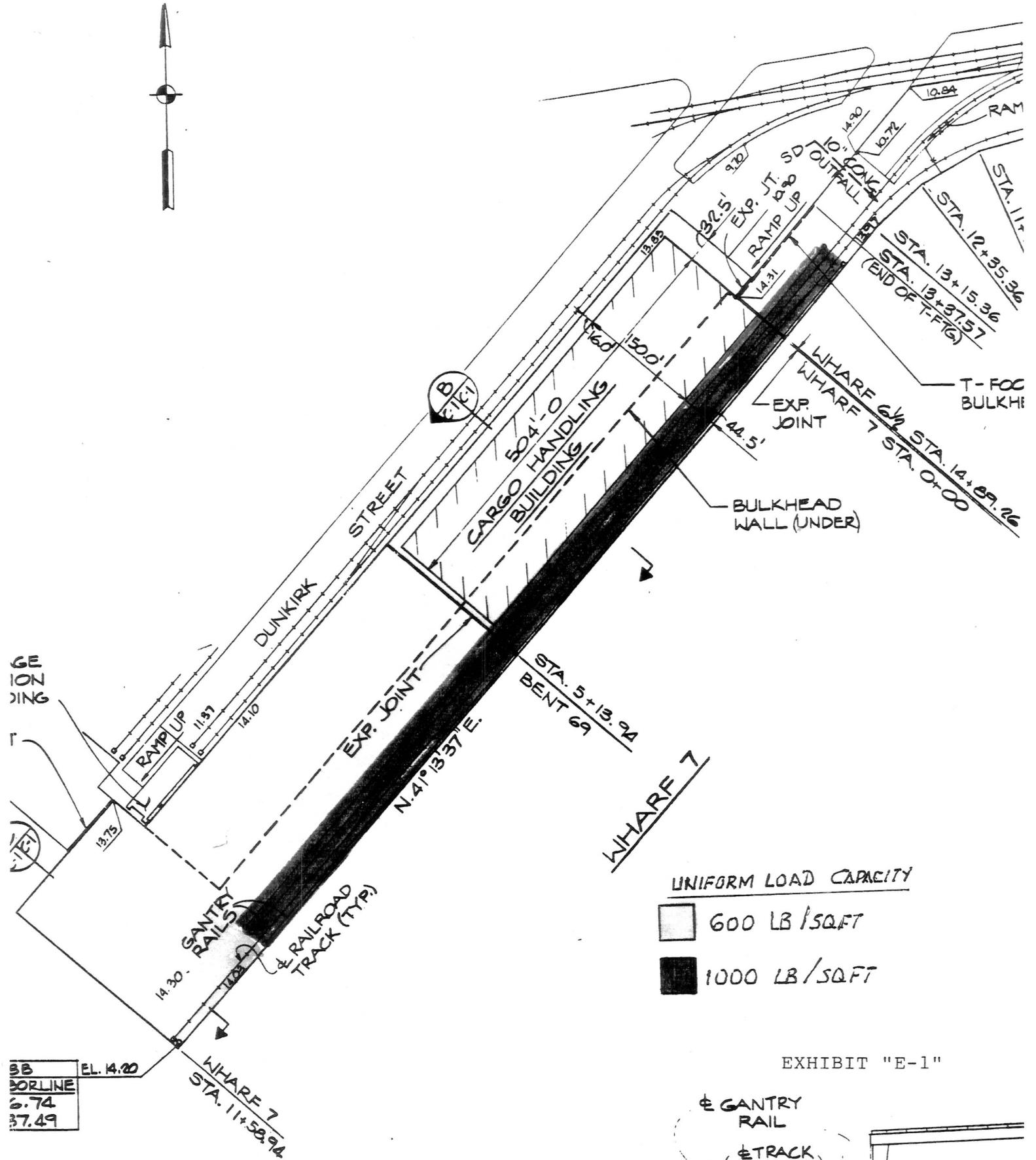
(f) **Access to Premises:** Licensee, its agents, employees and third persons using the licensed premises with the consent and approval of Licensee shall have necessary access to the licensed premises from Burma Road only, and only in connection with the business operations of Licensee on the licensed premises.

(g) **Promotion of Facilities:** Licensee recognizes that effective marketing of the licensed premises is an essential element in the decision of the Port to license the premises to Licensee and Licensee agrees to use its best efforts to induce cargo to be handled over the licensed premises and shall cooperate fully with the Port in its efforts to attract cargo to use the facilities located upon the licensed premises. Licensee shall pursue all cargo generating activity in addition to steel cargo. Whenever any shipping line is refused terminal service by Licensee at the licensed premises, Licensee shall notify the Executive Director of the Port, in writing, of such refusal, together with the reason or reasons why such shipping line could not be accommodated by Licensee. If in such event the Executive Director determines that the shipping line refused service by Licensee should be accommodated with respect to future services requested by such shipping line, he shall so notify Licensee, in writing, which notice shall include a plan for providing such terminal services, and Licensee shall follow such plan set forth by the

Executive Director; provided that Licensee shall not be required to follow such plan if it can establish to the satisfaction of the Port that such plan would cause Licensee to provide such services at an economic loss. At such times during the term of this Agreement that the terminal approaches throughput capacity, as such capacity is mutually determined by the parties hereto, Licensee will consult with the Port prior to introducing additional steamship lines to the terminal if by doing so terminal congestion can reasonably be anticipated to result. It is understood and agreed that any breach of this Section by Licensee shall be deemed to be a material breach of this Agreement.

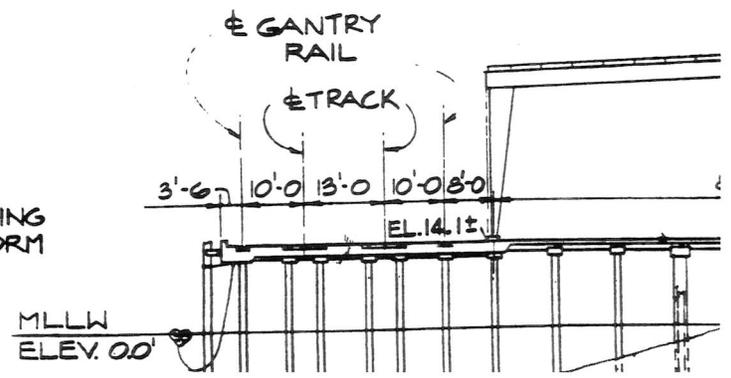
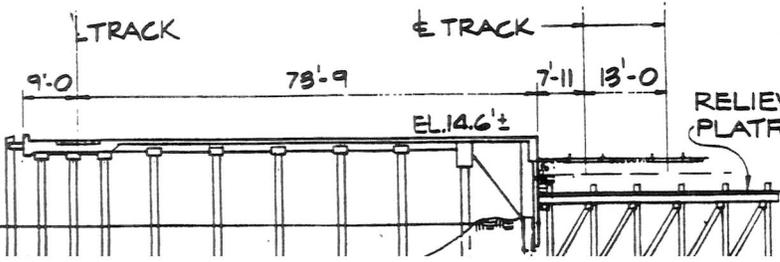
Licensee shall not in any manner participate in the transfer of a water carrier to the premises from the use of another of the Port's facilities, without the prior written consent of the Port. The Port will cooperate fully with Licensee in maximizing the use of the licensed premises.

Licensee agrees that effective terminal operations require regular and frequent contact and coordination with water carriers, other users of the terminal and the Port of Oakland Maritime Division. Licensee therefore agrees to maintain appropriate communication and coordination regarding all terminal operations with water carriers, other users of the terminal and the Port of Oakland Maritime Division.



BB	EL. 14.20
BORLINE	
6.74	
37.49	

EXHIBIT "E-1"



MLLW
ELEV. 00'

EXHIBIT "F"

VENDING MACHINES

Only the following paragraph which is checked shall apply:

_____ **Vending Machines:** Licensee is hereby granted and shall have the right to maintain and operate upon the described premises coin-operated machines, vending food, beverage and tobacco products for the use and convenience of its employees and customers only; provided, however, that the provisions of this paragraph shall not prevent or prohibit Licensee from conducting or operating on the assigned premises the business or activity for which use, as hereinbefore in Paragraph 4 stated, said premises are assigned to Licensee.

 X **No Vending Machines:** Licensee shall not sell, serve or vend, nor shall Licensee permit another person, firm or corporation to sell, serve or vend any food or food products, alcoholic or nonalcoholic beverages, cigarettes, cigars or tobacco on the described premises through coin operated vending machines, or otherwise, nor shall Licensee operate or maintain or permit to be operated or maintained on the described premises any coin operated nonmerchandising machines without the prior written consent of the Board of Port Commissioners and upon terms agreeable to the parties hereto; provided, however, that the provisions of this paragraph shall not prevent or prohibit Licensee from conducting or operating on the assigned premises the business or activity for which use, as hereinbefore in Paragraph 4 stated, said premises are assigned to Licensee.

EXHIBIT "G"

[Not Used]

EXHIBIT "H"

LIABILITY INSURANCE LIMITS AND REQUIREMENTS

1. Licensee shall maintain in force during the term of this License and Concession Agreement Comprehensive or Commercial General Liability Occurrence Form insuring Bodily Injury and Property Damage Liability, including:

- (X) Premises and Operations;
- (X) Owned, Nonowned and Hired Automobiles;
- (X) Completed Operations;
- (X) Product Liability;
- (X) Blanket Contractual;
- (X) Broad Form Property Damage (including Completed Operations)
- (X) Personal Injury (Delete Contractual and Employee Exclusions);
- () Liquor;
- () Advertising;
- (X) Independent Contractors;
- () Aircraft Liability (\$_____ .00)
- () Underground, Explosion and Collapse Hazard (XCU)
- (X) Other: Stevedore Liability

for the full limits in existing policies, but in no event for less than the sum of:

_____	ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00)
<u> X </u>	SIX MILLION AND 00/100 DOLLARS (\$6,000,000.00)
_____	TWENTY-FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00)
_____	_____ (\$_____ .00)

combined single limit. Licensee agrees that the Port shall be named as an additional insured, by endorsement, under such liability insurance policy or policies. Fire Legal Liability insurance in the amount of **ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00)** also is required.

2. Licensee shall also provide to the Port evidence of:

- statutory worker compensation coverage under California law
- employer's liability coverage for no less than One Hundred Thousand Dollars (\$100,000)
- endorsements evidencing Longshoreman and Harbor Workers' coverage and Jones Act coverage if applicable.
- subrogation waiver

EXHIBIT "I"

[Not Used]

EXHIBIT "J"

ADDITIONAL PROVISIONS

1. The Port leases from the United States of America, acting by and through the Secretary of the Army (herein "the Army"), the licensed premises, together with other property at the Oakland Army Base, pursuant to that certain Lease No. DACA 05-1-78-575, as amended through Supplemental Agreement No. 28 (herein, "the Army Lease").

This Agreement is subject to all of the terms, conditions and provisions of the Army Lease. Licensee shall not use or permit the premises, or any part thereof, for any use, operation or activity that would constitute a breach of the Army Lease.

2. Licensee shall be responsible for, and shall indemnify, hold harmless and defend the Port with respect to all liability, costs, expenses and claims arising out of any act or omission by Licensee which constitutes non-compliance with the obligations of the Port as lessee under the Army Lease or non-compliance by Licensee with the obligations of Licensee under this Agreement.
3. Licensee shall at all times comply with applicable provisions of Port of Oakland Tariff No. 2-A, as amended and its successors (sometimes referred to herein as the "Port's Tariff").
4. Licensee shall establish to the reasonable satisfaction of the Port, as a prerequisite to the issuance of a permit from the Port for any building permit for the Premises, that Licensee is in compliance with the Port's Non-Discrimination and Small Business Utilization Policy, as amended from time-to-time, with respect to such permit.

5. Licensee agrees that Licensee shall be responsible at Licensee's cost and expense for all maintenance and repairs of the licensed premises, including the Army Crane, railroad tracks, and other Army furniture, fixtures and equipment, and the access railroad tracks on the adjacent premises, except that the Port shall be responsible at no cost or expense to Licensee for structural maintenance and repairs to (a) bearing piles for pile supported Wharf 7, (b) building foundations except portable buildings, (c) underground utilities to buildings and dock areas and (d) sewer lift stations. The Port's structural maintenance and repair obligation shall not apply in the following cases: (1) If the need to repair arises out of negligent or other wrongful conduct by Licensee or Licensee's users or invitees, in which case repair and the cost of repair shall be Licensee's responsibility; or (2) If, together with the cost of all prior Port repairs to the licensed premises during the past 12 calendar months, the cost to the Port to repair exceeds \$250,000, unless (i) The Port receives from the Army a satisfactory and legally binding written assurance that the Army shall fully compensate the Port for all such costs and repairs that exceed \$250,000 or (ii) the Port and Licensee otherwise reach a mutually acceptable written agreement on sharing the costs of repairs. If neither the Port nor Licensee is obligated to repair, and they are unable to reach agreement on repair, then Licensee may cancel and terminate this Agreement by giving to the Port at least 30 days prior written notice after the Port is notified by Licensee of the need for repair.
6. Licensee shall be solely responsible at no cost or expense to the Port for security, maintenance, repair and replacement for all personal property and equipment belonging to the Army and located on the licensed premises. Licensee shall fully-cooperate with the Port in preparing and signing an inventory and survey of said property and equipment and permanent improvements at the licensed premises upon Licensee's initial entry upon the licensed premises and upon the expiration or termination of this Agreement, and said inventory and survey

shall constitute the basis for settlement between Licensee and the Port for property lost, damaged or destroyed.

7. Licensee shall be solely responsible at no cost or expense to the Port for security for the licensed premises and all property therein in accordance with the standards of the Army.
8. Licensee shall promptly reimburse to the Port and in no event later than 15 days after receipt of a request therefor, all Port costs and expenses for providing utility metering at the licensed premises required pursuant to the Army Lease. Licensee shall also pay, or promptly reimburse to the Port (and in no event later than 15 days after receipt of a request therefor) in the case where the Port is billed by the utility provider, for all electric power, gas, water and other utilities provided to the licensed premises.
9. Promptly after receipt of any notice from the Army under the Army Lease regarding surge conditions which affects the licensed premises, the Port shall provide Licensee a copy of said notice and Licensee shall take all actions necessary by Licensee to assure Port compliance with such notice from the Army to the extent it affects the licensed premises.
10. The Port will maintain fire insurance covering the premises in such amounts and including such coverages, exclusions and terms and conditions as required by the Army Lease, and will notify Licensee of the cost of said insurance. Licensee shall pay to the Port as rent said cost within 15 days after the Port notifies Licensee of said cost.

11. The Port shall provide maintenance dredging as required by the Army Lease, but subject to the Port's ability to secure permits therefore on reasonable terms. Any other dredging desired by Licensee shall be performed by the Port upon Licensee's request subject to Licensee's payment of one-half of all costs and expenses therefore (including all costs and expenses of testing, securing permits, and for dredged material disposal) and subject to the Port's ability to secure permit therefore on reasonable terms.

EXHIBIT "K"

LISTED SUBSTANCES

For each Listed Substance identified below, Licensee shall provide to the Port a copy of any available corresponding Material Safety Data Sheets

NONE