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DAVID D. COOKE

July 28, 1993

Susan L. Hugo
Senior Hazardous Materials Specialist
Department of Environmental Health
Alameda County Health Care Services Agency
80 Swan Way, Room 200
Oakland, California 94621

Re: Powell Street Plaza, 5500 Eastshore Highway, Emeryville, CA

Dear Ms. Hugo:

We represent Eastshore Partners ("Eastshore"), The Martin Company, and related entities and individuals in matters relating to the Powell Street Plaza property ("Site") in Emeryville, California. We have received a copy of a letter to you dated July 16, 1993, written by Barry Sandals on behalf of his client, Aetna Real Estate Associates ("Aetna"). We are concerned that Mr. Sandals' letter may have led the County to form certain misconceptions about the facts pertaining to the Site and to the nature of the relationship between Eastshore and Aetna. While Eastshore does not object to the County's designation of Aetna as a "secondarily responsible party," we must nevertheless respond to Mr. Sandals' letter on Eastshore's behalf in order to set the record straight.

As you know, Eastshore has already undertaken to respond to your letter of June 4, 1993 to Aetna's Maria Burgi. We understand that, during your meeting on July 15, 1993 with Eastshore's Tom Gram and PES Environmental's Rob Creps, you agreed to extend to August 2, 1993 Eastshore's time to respond in writing to your June 4 letter.

Eastshore's response on Aetna's behalf to the County's request to Aetna is not and should not be construed as an admission by Eastshore that it is a responsible party -- primarily, secondarily, or otherwise -- with respect to this Site. Rather, Eastshore responds as a means of addressing its duties arising out of an indemnity provision included in the

February 24, 1990 Purchase and Sale Agreement ("Agreement") between Eastshore and Aetna. That indemnity provision is implicated in this case because P.I.E. Nationwide ("P.I.E."), the party that is responsible for any soil or groundwater contamination at the Site, breached its obligation to Eastshore to perform to completion certain remedial actions at the Site and commenced bankruptcy proceedings in Florida shortly thereafter.

Aetna contends in Mr. Sandals' letter that Eastshore is legally obliged to fulfill County requirements regarding this Site on two different theories. First, according to Aetna, Eastshore is itself a "responsible party," directly liable to the County for a site investigation and for any remediation that may be required. Second, Aetna claims that Eastshore bears an affirmative contractual duty to Aetna to remediate the Site. While the matter may seem academic to the County, we must nevertheless point out that Aetna's contentions are incorrect, for the following reasons.

1. Aetna's theory that Eastshore is directly responsible for any soil or groundwater contamination at the Site is based upon a misconception of the facts. Aetna states that Eastshore purchased the Site by agreement dated April 11, 1986 and the underground storage tanks ("USTs") were removed from the Site in July 1986. Aetna further asserts that the purchase agreement provided that Eastshore would cooperate with P.I.E. in the removal of the tanks. From this, Aetna concludes that Eastshore owned the tanks or had sufficient control over the tanks to subject Eastshore to liability.

This is simply untrue, as a brief review of the history of the Site demonstrates. From approximately 1944 to approximately March 1986, P.I.E. owned and/or operated the Site as a trucking and freight terminal. At unknown times during its ownership and operation, PIE installed several USTs at the Site for use in its trucking business. On approximately December 27, 1985, it appears that PIE conveyed the Site to IU Terminals, Inc. ("IU Terminals"). On April 11, 1986, IU Terminals and East Bay Park (Eastshore's predecessor in interest) entered into a written Agreement of Purchase and Sale (the "IU Terminals Agreement"), for the sale of the PIE Site to East Bay Park. (Exhibit A). East Bay Park did not actually acquire the PIE Site at that time by virtue of entering into the IU Terminals Agreement. Nor did it ever agree to purchase any trade fixtures installed or used by PIE at the Site, including the USTs. In approximately July 1986, after PIE had ceased its trucking operations at the Site but while it still owned the Site, PIE removed all of its USTs. (Exhibit B).

Before the actual transfer of the PIE Site to East Bay Park Co., IU Terminals entered into an agreement with PIE under which, among other things, (a) PIE bought the Site back from IU Terminals, and (b) PIE agreed to assume all the rights and liabilities of IU Terminals related to the Site. Eastshore understands that IU Terminals conveyed title to the Site to PIE on or about September 30, 1986.

At approximately the same time, Eastshore and PIE modified the IU Terminals Agreement to require that PIE prepare and submit a cleanup plan, and conduct a cleanup of hydrocarbon contamination at the Site pursuant to the requirements of the appropriate regulatory agencies. That contamination was the result of PIE's operations, or was otherwise associated with PIE's USTs or the appurtenant piping systems.

In early December 1986, pursuant to the IU Terminals Agreement as modified, East Bay Park Co. acquired the Site from PIE. (Exhibit C). By that time, PIE had removed all of its USTs from the Site, and had already begun (in November 1986) to remediate hydrocarbon contamination in the soil at the Site.

At no time did East Bay Park, Eastshore, or any other related entity ever operate any trucking facility at the Site, nor did they ever own or operate any UST at the Site. The only action taken by East Bay Park in relation to the USTs was to require that P.I.E. remove them from the Site and clean up the associated contamination.[1/] Since it never owned or exercised any control over the USTs, neither East Bay Park nor Eastshore is directly liable for any contamination that resulted from their leakage.

2. In Mr. Sandals' letter, Aetna also cites the Agreement between it and Eastshore, as if this private agreement formed a basis for liability of either party to the County. While we assume that the County has no interest in trying to enforce private agreements among others, we must point out that Aetna misreads the Agreement. In section 14.01(s)(i) of the Agreement, a copy of which Aetna has provided to you, Eastshore represented that following the completion of the activities and services under the Clean-up Contract between P.I.E. and CytoCulture, the firm that P.I.E. had engaged to perform a groundwater remediation project at the Site, no contamination relating to the "Prior Harmful Use" that either is a violation of an environmental law, or which does not conform to a requirement of a governmental agency, would remain on the property. (Agreement,

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1/ East Bay Park did agree to pay half of the costs of removal. However, East Bay Park did not agree to pay half the costs because it had responsibility for the USTs. It agreed to do so in exchange for IU Terminal's agreement to an extension of time under the purchase and sale agreement to test the soils at the Site. (see. Attachment A. Second Addendum to Agreement of Purchase and Sale).

§14.01(s)(i), p. 63.)[2/] In that same section, the parties spelled out exactly what they meant with respect to this representation:

> The intent of the foregoing representation is that [Eastshore] shall indemnify and hold [Aetna] harmless from and against any and all loss, cost, damage, liability and expense (including without limitation attorneys' fees and costs) arising from or in connection with the performance or failure of performance of the Clean-up Contract by either party thereto, or by the failure, for any reason, of the Property and any other property in the vicinity of the Property (where the source of the contamination in the other property is attributable to contamination of the Property) to be cleaned up or remediation measures to be completed in relation to the Prior Harmful Use in accordance with the Clean-up Contract and in compliance with all Environmental Laws in effect as of the Closing Date and the requirements from time to time of any governmental authority with jurisdiction.

(Id., §14.01(s)(i), pp. 63-64.) As between Aetna and Eastshore, there is a fundamental difference between a promise to Aetna to remediate the Site, on the one hand, and an agreement to indemnify Aetna from certain consequences of P.I.E.'s breach of its own promise to complete the cleanup, on the other. Eastshore never promised to Aetna that it would clean up the property or even to guarantee P.I.E.'s performance, but it did agree to indemnify Aetna. It is for this reason that Eastshore has voluntarily stepped forward to respond to the County's requests.

2/ The "Prior Harmful Use" was defined in Schedule 4 of the Agreement in the following terms: "Prior use of most of the Property as a truck terminal (including maintenance facilities) by PIE Trucking and East Texas Motor Freight caused hydrocarbon contamination to be released into the soil and water." (Agreement, Schedule 4, ¶8, p. 3).

If you have any questions, please contact me at (415) 397-0100.

Very truly yours,

David D. Cooke

Attachments

cc: Tom Gram
Rob Creps
Barry Sandals
Richard C. Hiett
Rafat A. Shahid
Gil Jensen
Edgar B. Howell

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THIS AGREEMENT is entered into this 11th day of ~~March~~ April, 1986, by and between I.U. TERMINAL PROPERTIES, INC., a Delaware corporation ("SELLER") and EAST BAY PARK COMPANY, a California Limited Partnership ("BUYER").

RECITALS

A. SELLER is the owner of that certain improved real property situated in the City of Emeryville, County of Alameda, State of California, consisting of seven (7) gross acres, more or less, described as Parcel B, Parcel Map 4223 recorded January 17, 1984 in Book 141 of Parcel Maps, Page 91-92, Alameda County Records as shown on Exhibit A attached. SELLER wishes to sell said seven (7.0) acres (the 7.0 acres plus part of any railroad easement lying within the 7.0 acres) which is hereinafter referred to as the "Real Property".

B. BUYER desires to purchase the Real Property and certain other included assets from SELLER, and SELLER is willing to sell the Real Property and certain other included assets to BUYER, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto in consideration of the mutual covenants, terms and conditions hereinafter set forth, agree as follows:

1. INCLUDED ASSETS. The following assets are included in the sale of the Real Property, and wherever the word "Property" is used in this Agreement, it shall mean and include:

(a) The Real Property and the improvements thereon.

(b) SELLER's right, title and interest in any reports, plans, renderings, permits and approvals, maps prepared pursuant to the Subdivision Map Act or any other document prepared or obtained for the Real Property.

2. AGREEMENT TO SELL AND PURCHASE. Subject to the terms and conditions set forth herein, SELLER agrees to sell the Property to BUYER, and BUYER agrees to purchase the Property from SELLER, for a purchase price of THREE MILLION SIX HUNDRED THOUSAND DOLLARS cash, which BUYER shall pay to SELLER as follows:

(a) BUYER shall deposit into escrow TEN THOUSAND DOLLARS ($10,000) within 2 business days of SELLER'S execution and delivery to BUYER of this Agreement.

(b) BUYER shall deposit into escrow upon waiver of the condition described in subparagraph 3.(a)(i)(soil test) an additional THREE HUNDRED FORTY THOUSAND DOLLARS ($340,000).

(c) THREE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS ($3,250,000) in cash upon Close of Escrow.

3. ESCROW AND CONDITIONS TO CLOSE OF ESCROW. An escrow for the within sale shall be opened at Chicago Title Company of Alameda, Kaiser Building, Oakland, California, (the "Escrow Holder"). The consummation of the within sale, i.e., the Closing of Escrow, shall occur on or before July 31, 1986. Close of Escrow shall be contingent upon satisfaction of the following conditions precedent, at or prior to Close of Escrow:

(a) Conditions to BUYER's obligations:

(i) BUYER shall have thirty (30) working days from SELLER's acceptance to have the Real Property tested for soils

contamination a... to approve the reports o... ne testing entity. SELLER shall arrange access to the Real Property for that purpose. Concurrently, with waiver of this condition, BUYER shall instruct the Escrow Holder to release BUYER's $350,000 deposit to SELLER.

(ii) SELLER shall have deposited a grant deed executed in recordable form transferring marketable title to the Real Property free and clear of any tenancies, to BUYER; free and clear of all liens and encumbrances, except a statutory lien for non-delinquent taxes; the exceptions numbered 1-11 on the Preliminary Title Report dated as of December 11, 1985 issued by Chicago Title Company of Alameda County.

(iii) SELLER shall have deposited into Escrow a fully executed Assignment wherein SELLER assigns to BUYER all of its right, title and interest in the assets, if any, listed in (iv) The Escrow Holder is in a position to and will issue at closing its standard Owner's form of CLTA title insurance policy in the amount of THREE MILLION SIX HUNDRED THOUSAND DOLLARS ($3,600,000.00) insuring that fee simple title to the Real Property is vested in BUYER, subject only to those liens and encumbrances described in subparagraph (ii) above.

BUYER shall inform SELLER in writing within the period for satisfaction of each condition whether the condition has been satisfied or waived by BUYER or whether BUYER is terminating the Agreement because of nonsatisfaction. If notice is not timely given, the condition shall be deemed satisfied or waived by BUYER.

(b) Conditions to SELLER's obligations -

(i) BUYER shall have deposited in escrow the cash necessary to close escrow plus BUYER's share of closing costs.

(c) Prior to Close of Escrow, each party shall deliver to the Escrow Holder Escrow Instructions in accordance with this Agreement. If the form of a document to be submitted by a party into Escrow is not attached as an Exhibit to this Agreement, such document shall be in a form reasonably satisfactory to the other party.

4. PRORATIONS AND EXPENSES IN ESCROW. The expenses of escrow shall be prorated as follows:

(a) The cost of the title insurance policy shall be paid by BUYER.

(b) All escrow fees shall be paid one half (1/2) by SELLER and one half (1/2) by BUYER.

(c) Real property taxes levied or assessed on the Real Property water, sewer, and utility charges, shall be prorated as of Close of Escrow. SELLER and BUYER hereby agree that if any of the aforesaid prorations cannot be calculated accurately as of the closing, then the same shall be calculated within thirty (30) days after the closing and either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party.

(d) Prepaid fees, rents, deposits and premiums, if any, shall be prorated as of Close of Escrow.

(e) Any bonds or improvement assessments which are a lien on the Real Property shall be paid by SELLER.

(f) documentary transfer or other local tax levied on or as a result of this transaction shall be paid by SELLER.

(g) Any other costs shall be paid as is customary in the County of Alameda.

5. RIGHT OF ENTRY AND INSPECTION OF PROPERTY. SELLER hereby grants BUYER or his agents or employees, the right to enter on the Real Property for the purpose of and as is reasonably necessary for inspection of the Real Property, for performing engineering, soils, architectural and land planning studies, and any other activity required within the discretion of BUYER to aid BUYER in developing the Property. BUYER hereby agrees to save and hold SELLER harmless from and to defend and indemnify SELLER against any loss, damage, liability or expense (including attorneys fees) suffered by SELLER as a result of BUYER's activities and, if for any reason BUYER does not purchase the Property, BUYER shall remove any mechanic's lien which may be recorded as a result of such entry. Without in any way limiting the foregoing, BUYER shall backfill and compact any holes or trenches created by reason of entry of BUYER, its agents or employees. This right of entry shall continue through Close of Escrow and any period thereafter during which SELLER occupies the Real Property.

6. BROKER'S COMMISSION. BUYER and SELLER are dealing directly with each other and neither shall be liable for payment of a broker's commission or finder's fee as a result of the

sale. If a br er makes a claim for a co ission, the party through whom the claim is being made shall indemnify and hold the other party harmless. SELLER acknowledges that it understands BUYER's Partners are licensed real estate brokers buying for their own account.

7. NOTICES. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party hereto, or by the Title Company, shall be in writing, and shall be deemed duly served and given when personally delivered to either of the parties to whom it is directed or, in lieu of such personal service, forty-eight (48) hours after it is deposited in the United States mail, certified or registered, return receipt requested, or delivered to a bonded messenger service, addressed to the parties as follows:

TS

GM

SELLER:

RYDER/P.I.E. NATIONWIDE, INC.
Attn: Properties Dept.
2050 Kings Road
P.O. Box 2408
Jacksonville, FL. 32203

BUYER:

EAST BAY PARK COMPANY
Attn: Thomas J. Gram
5901 Christie Avenue, Suite 403
Emeryville, CA 94608

8. FAILURE OF CONDITIONS. If a condition set forth in Paragraph 3 which is for the benefit of one party is not satisfied or waived by the benefited party, then either party shall have the right, exercisable by giving written notice to the Escrow Holder and the other party, to cancel the Escrow and terminate this Agreement. BUYER shall then be immediately entitled to recover all monies deposited by it and/or released to SELLER, or paid on behalf of SELLER.

9. DEFAULT AND DAMAGES. If BUYER fails to complete the transaction, i.e., escrow does not close as a result of BUYER's default, SELLER shall be released from SELLER's obligation to sell the Property to BUYER. IN SUCH EVENT, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES IN CASE OF BUYER'S DEFAULT, AND THAT AS SELLER'S SOLE RIGHT TO DAMAGES, SELLER MAY RETAIN BUYER'S DEPOSIT IN THE SUM OF THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000.00). THE AMOUNT OF DEPOSIT HAS BEEN AGREED UPON BY THE PARTIES AS A REASONABLE ESTIMATE OF THE DAMAGES

SELLER WILL SU[illegible] AS THE RESULT OF BUYER'[illegible]REACH.

SELLER: JM

BUYER: TL

10. ENTIRE AGREEMENT. This instrument contains the entire agreement between BUYER and SELLER respecting purchase of the Property, and any agreement or representation respecting the purchase of the Property or the duties of either BUYER or SELLER in relation thereto not expressly set forth in this instrument is null and void.

11. ATTORNEYS FEES. In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of his costs of suit, and not as damages, a reasonable attorneys fee to be fixed by the Court. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorneys fees. No sum for attorneys fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover his costs or attorneys fees.

12. BINDING. This Agreement is binding upon the heirs, successors, assigns, nominees or personal representatives of the parties hereto.

13. ASSIGNABILITY. This Agreement and the rights and/or obligations of BUYER under this instrument may be assigned by BUYER.

14. SURVIVAL OF TERMS. All covenants, warranties and

representation contained in this Agreement shall survive the Close of Escrow and the delivery of documents as provided herein.

15. AMENDMENTS AND MODIFICATIONS. This Agreement may be amended or modified only by a further written document signed by each of the parties hereto and any attempted oral modification shall be deemed null and void and of no effect whatsoever.

16. FURTHER DOCUMENTS. Each party will, whenever and as often as it shall be requested by the other party up to and including Close of Escrow, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, including Parcel Map documentation, escrow instructions, as may be necessary in order to complete the sale, conveyance and transfer herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as may be requested in order to carry out the intent of this Agreement.

17. COUNTERPARTS. This Agreement may be executed simultaneously, in counterparts or duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

18. SEVERABILITY. Should any part, term or provision of this Agreement or any document required herein to be executed or delivered at the Close of Escrow be declared invalid, void or unenforcable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

19. TIME OF ESSENCE. Except as otherwise specifically provided in this Agreement, time is of the essence of this Agreement, and each and every provision thereof.

20. EXHIBITS. All of the exhibits attached to this Agreement are incorporated herein as though set forth in full.

21. APPLICABLE LAW. This Agreement shall be construed and interpreted under, and governed and enforced according to, the laws of the State of California.

22. REMEDIES NOT EXCLUSIVE AND WAIVERS. Unless otherwise indicated, no remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

23. AUTHORITY TO ENTER AGREEMENT.

(a) The undersigned individual being a Corporate Officer of SELLER represents and warrants to BUYER that he has the full power and authority granted to him by SELLER to enter into this Agreement. SELLER shall provide with its acceptance of this offer a resolution of the Board of Directors duly certified by the Secretary of the Corporation.

(b) The undersigned Partner of BUYER represents and warrants to SELLER that he is authorized to enter into

this Agreement on behalf of BUYER.

24. INTERPRETATIONS AND DEFINITIONS.

(a) Definitions. For purposes of this Agreement, the following terms shall have the meaning hereafter set forth:

i. "Closing" or "Close of Escrow" shall mean the consummation of the purchase and sale transaction evidenced by the recording of the Grant Deed described above.

ii. "Date of this Agreement" shall mean the date set forth in the preamble paragraph on the first page hereof, which date shall be the date the Agreement is fully executed by both parties.

(b) Construction and Ambiguities. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

(c) Interpretation. In this Agreement, the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporations, partnerships, firms, trust, or associations wherever the context so requires.

(d) Recitals and Captions. The recitals and captions of the paragraphs and subparagraphs of this Agreement are for convenience and reference only, and the words contained herein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions

of this Agreement.

25. EXECUTION. In the event this Agreement is executed only by BUYER, this Agreement shall be regarded only as an offer to purchase and shall not obligate both SELLER and BUYER until this offer is accepted by execution hereof by SELLER and delivered to BUYER. If SELLER has not accepted this offer and delivered a fully executed copy of this Agreement to BUYER within three (3) business days of its submission by BUYER, this offer shall be of no force and effect.

26. BUYER PURCHASING THE PROPERTY "AS IS". BUYER acknowledges that (a) BUYER is an experienced investor, knowledgeable in the financial and business risks attendant to an investment in income property, capable of evaluating the merits and risks of an investment in the Property, has evaluated the merits and risks of an investment in the Property and has determined that, subject to and upon the terms and conditions set forth in this agreement all of its exhibits, such an investment is suitable to BUYER, and (b) BUYER will be concluding the purchase of the Property based solely upon BUYER's inspection and investigation of the Property and all documents related thereto and that BUYER will be purchasing the Property on an "AS IS" basis. Without limiting the above, BUYER acknowledges that SELLER has not made any representations or warranties on which BUYER is relying as to any matters concerning the Property (except as to the matters set forth in Paragraph 6) including, but not limited to, the land, improvements, development rights, taxes, bonds, permissible uses, water or water rights, topography, utilities, zoning, soil,

subsoil, the purposes for which the Property is to be used, and drainage.

27. ADJUSTMENT OF PURCHASE PRICE. BUYER and SELLER agree there shall be no adjustment of the purchase price should there be determined to be an increase or decrease in the area to be sold.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

SELLER:

I.U. TERMINAL PROPERTIES, INC.,
a Delaware corporation

BY: _____
Executive Vice Pres

BUYER:

EAST BAY PARK COMPANY,
a California Limited Partnership

BY: _____
THOMAS J. GRAM
General Partner

ADDENDUM to Agreement of Purchase and Sale dated ~~March~~ April 11, 1986 between IU Terminal Properties, Inc., Seller, and East Bay Park Company, Inc., Buyer, for property lcoated in Emeryville, Alameda County, California.

1. ~~The Ten Thousand Dollar ($10,000) deposit provided for in~~ Paragraph 2 (a) shall be retained by Seller if Buyer does not ~~waive the conditions set forth in Paragraph 3 (a) (i).~~

2. Buyer shall provide Seller copies of all tests, investigations, or reports obtained in regard to Paragraph 3 (a) (i).

3. Paragraph 7 shall be amended to provide that notice to the Seller shall be given to IU Terminal Properties, Inc., 7960 Arlington Expressway, Suite 501, P. O. Box 11161, Jacksonville, Florida 32211 with additional notice to P-I-E Nationwide, Inc., Attention: Properties Department, 7960 Arlington Expressway, Suite 601, P. O. Box 2408 (32203), Jacksonville, Florida 32211.

4. Seller shall provide its corporate resolution authorizing this sale within a reasonable period following waiver of conditions set forth in Paragraph 3 (a) (i) but prior to closing.

IU TERMINAL PROPERTIES, INC., SELLER

By _____

Date 4-7-86

EAST BAY PARK COMPANY, BUYER

By _____

Date 4/10/86

SECOND ADDENDUM to Agreement of Purchase and Sale dated April 11, 1986 between IU Terminal Properties, Inc., Seller, and East Bay Park Company, Inc., Buyer, for property located in Emeryville, Alameda County, California.

1. Paragraph 3 (a) (1) is amended to extend the period for Buyer's waiver of soil conditions to 5:00 P.M., June 30, 1986. It being understood by Buyer and Seller that during this period Buyer shall cooperate with P-I-E Nationwide, Inc. in the removal of underground fuel tanks and testing for subsurface contamination.

2. In consideration of this extension, Buyer agrees to pay one-half of the cost of removal of underground fuel tanks and one-half of any testing necessary to determine the extent of soil contamination, if any.

IU TERMINAL PROPERTIES, INC.

By _____

Date _____

EAST BAY PARK COMPANY, INC.

By /s/ TJG

Date 5/29/86

THIRD ADDENDUM to Agreement of Purchase and Sale dated April 11, 1986 between IU Terminal Properties, Inc., Seller, and East Bay Park Company, Inc., Buyer, for property located in Emeryville, Alameda County, California.

1. Paragraph 3 (a) (i) is amended to extend the period for Buyer's waiver of soil conditions to the earlier of 5:00 P.M. EDT, August 8, 1986 or 5 days after notification of Buyer of the completion of underground tank removal and the results of testing for subsurface soil contamination. It being understood that during this period, Buyer shall cooperate with P-I-E Nationwide, Inc. in the removal of the underground fuel tanks and testing for subsurface contamination.

2. Paragraph 3 is further amended to extend the date for Close of Escrow to occur on or before 14 days following waiver by Buyer of the condition stated in Paragraph 3 (a) (i) above.

3. All other terms and conditions of the Agreement of Purchase and Sale and prior Addenda shall remain unchanged.

IU TERMINAL PROPERTIES, INC.

By _____

Date _____

EAST BAY PARK COMPANY, INC.

By _____

Date _____

FOURTH ADDENDUM TO AGREEMENT OF PURCHASE AND SALE DATED APRIL 11, 1986 BETWEEN IU TERMINAL PROPERTIES, INC., SELLER, AND EAST BAY PARK COMPANY, A CALIFORNIA LIMITED PARTNERSHIP, BUYER, FOR PROPERTY LOCATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, CALIFORNIA.

1. Buyer hereby waives the condition for soils testing under Paragraph 3 (a) (i).

2. New Paragraph 28 is hereby added as follows:

"28. Seller's Obligations Re: Soil. Seller agrees to do the following regarding additional site testing and cleanup of soil and water contamination:

(a) Seller shall complete the site testing for soils contamination and have its consultants prepare and submit to the requisite State and County agencies a proposal ("the Soils Plan"), attached as Exhibit A, to reduce the contamination to acceptable levels. Buyer anticipates that because of its construction schedule, it will have to use other soil to fill the excavations if Seller has not completed the soil cleanup by December 20, 1986. If Buyer, in its discretion, cannot extend the date for filling the excavation beyond December 20, 1986 then Seller shall be responsible for hauling the decontaminated soil from the site on or before February 15, 1987. In other words, if Seller has not finished decontaminating the soil by December 20, 1986, or such later date as Buyer determines, the Seller may continue decontamination process on the site until completion, or February 15, 1987 whichever is sooner, at which time Seller shall dispose of the decontaminated soil which Buyer can't use for fill. In the event soil decontamination, has not been completed by February 15, 1987, Buyer agrees that Seller may, at Seller's expense, continue decontamination in the 20' strip reserved for future dedication as a HOV lane. In any event, all soil decontamination shall be completed and all decontaminated soils shall be removed by May 31, 1987.

(b) Seller shall complete the site testing for groundwater contamination and have its consultants prepare and submit to the requisite State and County agencies a proposal ("the Water Plan") to reduce the contamination to acceptable levels. Seller and Buyer acknowledge that the time for development, implementation and completion of the Water Plan may extend beyond the anticipated closing date of this contract. Seller and Buyer agree to cooperate in developing the Water Plan and coordinate implementation with Buyer's development plans so as not to unnecessarily interfere with Buyer's development plan. Seller shall have the water cleaning/treatment equipment, including piping in place prior to January 9, 1987, or at such later date as Buyer determines.

(c) Upon approval by the requisite State and County agencies, Seller shall commence work under the Soils Plan and the Water Plan ("the approved Plans"), and pay for and be responsible for reducing the soil and water contamination to acceptable limits in accordance with the approved Plans. The acceptable limits shall be

such that Buyer can develop the site for commercial purposes accessible by the public; i.e., a shopping center.

(d) Seller shall use its best effort to clean up the site in accordance with the approved Plans. In regard to the Soils Plan, Buyer and Seller shall cooperate in locating materials on areas of the site that will provide maximum aeration of the material while permitting, without additional cost to Buyer, development of the remainder of the site provided, however, the aeration activities shall not be located on or within 50' of actual building locations. In the event soil cleanup has not been completed by December 20, 1986 and the requisite agencies advise that no further testing in the excavations is required, Buyer may fill the excavations using dock fill and other suitable materials from building demolition and will use the decontaminated soils elsewhere on the site, if possible, or Seller will dispose of them after Seller has reduced contaminants to an acceptable level. If cleanup is completed prior to the date, Buyer is ready to commence construction, Seller shall fill excavations with the decontaminated soil, properly compacted, in accordance with the Soils Plan.

(e) Seller shall leave in Escrow funds equal to the estimated cost of the approved Plans including monitoring activities and other ongoing expenses, i.e. electric or sewer charges. The funds shall be dispersed from Escrow as the clean up progresses pursuant to a schedule agreeable to Seller and Seller's contractor. If the funds left in Escrow prove insufficient, Seller shall be responsible for paying any shortfall. Upon completion of the approved Plans, Seller may withdraw any funds remaining in escrow. If a shortfall occurs, Seller shall deposit into Escrow additional funds sufficient to protect the Buyer from liens. Seller shall indemnify and hold Seller harmless from any cost or damages, including attorneys' fees, incurred by Buyer as a result of Seller's failure to pay its contractors."

3. Paragraph 2. Agreement to Sell and Purchase shall be amended as follows:

Paragraph 2(b) shall be eliminated.

Paragraph 2(c) shall be amended in its entirety as follows:

"The remainder of the purchase price, $3,590,000 plus Seller's costs of tank removal and testing pursuant to the Second Addendum, in cash upon Close of Escrow."

4. Paragraph 3. Escrow and Conditions to Close of Escrow shall be amended as follows:

The first paragraph shall be amended in its entirety as follows:

"An escrow for the within sale shall be opened at Chicago Title Company of Alameda, Kaiser Building, Oakland, California, (the "Escrow Holder"). The

consummation of the within sale, i.e., the Close of Escrow, shall be within twenty days after Buyer receives notice that Seller has received approval by requisite agencies to commence work under the approved Plans, or sooner upon fourteen days notice from Buyer."

5. Paragraph 7. Notices shall be amended to change the address of Seller as follows:

"SELLER:

P-I-E Nationwide, Inc.
P.O. Box 2408
Jacksonville, FL 32203
Attention: Properties Dept.

6. On September 26, 1986, P-I-E Nationwide, Inc. purchased the property included in the purchase and sale agreement dated April 11, 1986 from IU Terminal Properties, Inc. As part of this purchase, P-I-E Nationwide, Inc. was assigned and did accept assignment of that agreement and all the rights and obligations of IU Terminal Properties thereunder. Buyer hereby acknowledges and accepts said assignment to P-I-E Nationwide, Inc.

7. All other terms and conditions of the Agreement, as amended, shall remain the same.

SELLER:

P-I-E NATIONWIDE, INC.
a Florida Corporation

By: _____ Dated: 9/29/86
Its: Vice President

BUYER:

EAST BAY PARK COMPANY,
a California Limited Partnership

By: _____ Dated: 9/30/86

P★I★E NATIONWIDE

August 5, 1986

Emery 07148

Mr. Thomas J. Gram
East Bay Park Company
5901 Christie Avenue
Suite 403
Emeryville, CA 94608

RE: 5500 Eastshore Highway
Emeryville, CA

Dear Tom:

Please consider this notice of removal of the underground tanks from the referenced property. Enclosed are the results of the initial soil tests made at the time of removal. Per our engineer, the results of additional testing will be received on August 6 and I have requested that the additional test results and his recommendations be hand delivered to your office by Thursday, August 7. I am hopeful this will enable you to waive the soil conditions and proceed with the contract by Friday, August 8.

As outlined in Blymyer's letter, we have committed a total expenditure of $59,496. Depending upon your election to proceed or withdraw, we will forward the appropriate invoices upon their receipt.

Sincerely,

Bob Weaver

Robert W. Weaver
Director of Properties
and Real Estate

RWW:rd

Encls.

cc: John Mangu

Feb
89422

CHAIN OF TITLE GUARANTEE

NO 318687 LIABILITY $1,000.00 FEE $ 300.00

CHICAGO TITLE INSURANCE COMPANY

a corporation, herein called the Company,

GUARANTEES

THE CHASE MANHATTAN BANK, N.A.

herein called the Assured, against actual loss not exceeding the liability amount stated above which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

LIABILITY EXCLUSIONS AND LIMITATIONS

1. No guarantee is given nor liability assumed with respect to the identity of any party named or referred to in Schedule A or with respect to the validity, legal effect or priority of any matter shown therein.

2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurance herein set forth, but in no event shall the Company's liability exceed the liability amount set forth above.

Dated: MARCH 29, 1989

CHICAGO TITLE INSURANCE COMPANY

By _____

Authorized Signature

Please note carefully the liability exclusions and limitations and the specific assurances afforded by this guarantee. If you wish additional liability, or assurances other than as contained herein, please contact the Company for further information as to the availabilty and cost.

ORDER NO. 318687

EXHIBIT "A"

1. DEED
   FROM : BELLA JULIA CATUCCI
   TO : INTERMOUNTAIN TERMINAL COMPANY, A CORPORATION
   RECORDED : JULY 3, 1944, BOOK 4583, PAGE 44, OFFICIAL RECORDS

2. CORPORATION GRANT DEED
   FROM : RYDER/P-I-E NATIONWIDE, INC., A FLORIDA CORPORATION, AS SUCCESOR IN INTEREST TO INTERMOUNTAIN TERMINAL COMPANY, A NEVADA CORPORATION
   TO : IU TERMINAL PROPERTIES, INC., A DELAWARE CORPORATION
   RECORDED : DECEMBER 27, 1985, SERIES NO. 85-274382, OFFICIAL RECORDS

3. LIMITED GRANT DEED
   FROM : IU TERMINAL PROPERTIES, INC.
   TO : P-I-E NATIONWIDE, INC., A FLORIDA CORPORATION
   RECORDED : SEPTEMBER 30, 1986, SERIES NO. 86-238706, OFFICIAL RECORDS

4. CORPORATION GRANT DEED
   FROM : P-I-E NATIONWIDE, INC., A FLORIDA CORPORATION
   TO : EASTSHORE PARTNERS, A CALIFORNIA LIMITED PARTNERSHIP
   RECORDED : DECEMBER 8, 1986, SERIES NO. 86-308357, OFFICIAL RECORDS

JO/kh
1522-D
04/11/89

SCHEDULE A

CHAIN OF TITLE GUARANTEE

NO. 318687

The assurances referred to on the face page are:

That, according to the Company's property records subsequent to JANUARY 1, 1940, relative to the following described real property (but without examination of those Company records maintained and indexed by name), there are no DEEDS describing said real property or any portion thereof, other than those shown below under Exceptions.

The following matters are excluded from the coverage of this guarantee:

1. Unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof.
2. Water rights, claims or title to water.
3. Tax Deeds to the State of California.
4. Instruments, proceedings or other matters which do not specifically describe said land.

Exceptions:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Description:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

CHICAGO TITLE INSURANCE COMPANY

By _____

Assistant Secretary

ORDER NO. 101560

The land referred to in this report is situated in the state of California, County of ALAMEDA, and is described as follows:

CITY OF EMERYVILLE

PARCEL ONE:

PARCEL A OF PARCEL MAP NO. 4223, FILED JANUARY 17,1984, IN BOOK 141 OF PARCEL MAPS, AT PAGES 91 AND 92, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO EMERYVILLE REDEVELOPMENT AGENCY BY DEED RECORDED DECEMBER 31, 1986, SERIES NO. 86-335374, OFFICIAL RECORDS; AND ALSO THOSE PORTIONS THEREOF CONVEYED BY DEED RECORDED DECEMBER 1, 1987, SERIES NO. 87-320641, OFFICIAL RECORDS, AND DEED RECORDED JULY 6, 1988, SERIES NO. 88-167363, OFFICIAL RECORDS

PARCEL TWO:

THAT CERTAIN EASEMENT FOR SPUR TRACK PURPOSES, WHICH EASEMENT IS DESIGNATED AS PARCEL 2, AND PARTICULARLY DESCRIBED IN THE DEED BY BELLA JULIA CATUCCI, ALSO KNOWN AS BELLA CATUCCI, TO JOHN DEERE PLOW COMPANY OF MOLINE, A CORPORATION, RECORDED MARCH 15, 1944, IN BOOK 4486, PAGE 406, AS FOLLOWS:

A NON-EXCLUSIVE EASEMENT, FOR SPUR TRACK PURPOSES, APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1, ABOVE DESCRIBED OVER, AND ALONG, A STRIP OF LAND 20 FEET WIDE, ADJOINING SAID PARCEL 1, ON THE EAST, AND EXTENDING FROM THE DIRECT PRODUCTION EASTERLY OF THE MOST SOUTHERN LINE OF SAID PARCEL 1 TO A LINE DRAWN PARALLEL WITH, AND DISTANT AT RIGHT ANGLES, 71.50 FEET SOUTHEASTERLY FROM THE MOST NORTHERN LINE OF SAID PARCEL 1.

ASSESSOR'S PARCEL NO. 049-1515-011-05

PARCEL THREE:

PORTION OF LOT 26, IN SECTION 15, TOWNSHIP 1 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF POWELL STREET, WITH THE EASTERN LINE OF STATE HIGHWAY, KNOWN AS EAST SHORE HIGHWAY; RUNNING THENCE ALONG THE LAST NAMED LINE SOUTHERLY, 211.59 FEET TO THE NORTHERN LINE OF A STRIP OF LAND 20 FEET WIDE, DESCRIBED IN THE DEED TO SOUTHERN PACIFIC RAILROAD COMPANY, DATED JUNE 1, 1937, RECORDED JUNE 23, 1937, IN BOOK 3441 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 419; THENCE ALONG THE LAST NAMED LINE NORTH 75° 44' 45" EAST, 203 FEET, MORE OR LESS, TO THE WESTERN LINE OF THE LAND DESCRIBED IN THE DEED TO VALLEY EXPRESS COMPANY, DATED JULY 5, 1945, RECORDED JULY 6, 1945, IN BOOK 4730 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 140, (SS-42442); THENCE ALONG THE LAST NAMED LINE NORTH 14° 15' 15" WEST, 211.50 FEET TO SAID SOUTHERN LINE OF POWELL STREET; AND THENCE ALONG THE LAST NAMED LINE SOUTH 75° 44' 45" WEST, 202 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

(CONTINUED)

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED JULY 6, 1988, SERIES NO. 88-167363, OFFICIAL RECORDS.

PARCEL FOUR:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF POWELL STREET 80 FEET IN WIDTH, AND THE EASTERLY LINE OF INTERSTATE HIGHWAY NO. 80; THENCE IN A NORTHWESTERLY DIRECTION, ALONG SAID EASTERLY LINE, AND ALONG A CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH 75° 42' 50" EAST, 7443 FEET FROM SAID POINT OF BEGINNING, THROUGH A CENTRAL ANGLE OF 0° 06' 49" FOR A DISTANCE OF 14.76 FEET; THENCE NORTH 73° 08' 25" EAST 203.00 FEET; THENCE SOUTH 14° 15' 15" EAST 24.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID POWELL STREET; THENCE SOUTH 75° 44' 45" WEST 202.80 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 049-1515-001-01

PARCEL FIVE:

THAT PORTION OF THE 20 FOOT WIDE STRIP OF LAND DESCRIBED IN THE DEED FROM JOSEPH CATUCCI AND BELLA CATUCCI, HIS WIFE, TO SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JUNE 1, 1937 AND RECORDED JUNE 23, 1937 IN BOOK 3441 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 419, LYING BETWEEN THE NORTHEASTERN LINE OF THE 120 FOOT RIGHT OF WAY OF STATE HIGHWAY NUMBER IV ALA. ROUTE 69 AND THE SOUTHWESTERN LINE OF SHELLMOUND STREET AS SAID STREET IS DESCRIBED IN THE DEED FROM SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, ET AL., TO TOWN OF EMERYVILLE, A MUNICIPAL CORPORATION, DATED MARCH 27, 1940 AND RECORDED NOVEMBER 6, 1940 IN BOOK 4001 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 53.

EXCEPTING THEREFROM THE FOLLOWING:

THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED VERTICALLY, FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY; HOWEVER, GRANTOR, OR ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE AND 500 FEET BELOW THE SURFACE.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO EMERYVILLE REDEVELOPMENT AGENCY BY DEED RECORDED DECEMBER 31, 1986, SERIES NO. 86-335374, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NO. 049-1515-010-04

(CONTINUED)

PARCEL SIX:

PARCEL B OF PARCEL MAP NO. 4223, FILED JANUARY 17, 1984, IN BOOK 141 OF PARCEL MAPS, AT PAGES 91 AND 92, ALAMEDA COUNTY RECORDS.

ASSESSOR'S PARCEL NO. 049-1515-012

PARCEL SEVEN:

PORTION OF LOT 28, SECTION 15, TOWNSHIP 1 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF POWELL STREET, AS DEFINED IN THE DEED FROM J. CATUCCI AND WIFE, TO TOWN OF EMERYVILLE, DATED FEBRUARY 27, 1930 AND RECORDED MAY 13, 1930 IN BOOK 2338 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, AT PAGE 476, WITH THE WESTERN LINE OF SHELLMOUND STREET, AS SAID STREET IS DEFINED IN DEED FROM JOSEPH CATUCCI AND WIFE, TO TOWN OF EMERYVILLE, DATED DECEMBER 7, 1938 AND RECORDED NOVEMBER 6, 1940 IN BOOK 3979 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, AT PAGE 277; RUNNING THENCE ALONG THE SAID SOUTHEASTERN LINE OF POWELL STREET, SOUTH 75° 44' 45" WEST 482.41 FEET TO A POINT OF CUSP, BEING THE TRUE POINT OF BEGINNING; THENCE ALONG A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 40 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00", A DISTANCE OF 62.83 FEET; THENCE SOUTH 14° 15' 15" EAST 171.50 FEET TO THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM JOSEPH CATUCCI AND WIFE, TO SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JUNE 1, 1937 AND RECORDED JUNE 23, 1937 IN BOOK 3441 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, AT PAGE 419; THENCE ALONG SAID LINE SOUTH 75° 44' 45" WEST 156.55 FEET; THENCE NORTH 14° 15' 15" WEST 211.50 FEET TO SAID SOUTHEASTERN LINE OF POWELL STREET; THENCE ALONG SAID LINE NORTH 75° 44' 45" EAST 116.55 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 049-1515-007-04

GUARANTEE CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this Guarantee mean

(a) "land" the land described specifically or by reference in this Guarantee and improvements affixed thereto which by law constitute real property

(b) "public records" those records which impart constructive notice of matters relating to said land

(c) "date" the effective date

(d) "the Assured" the party or parties named as the Assured in this Guarantee or in a supplemental writing executed by the Company

(e) "mortgage" mortgage deed of trust trust deed or other security instrument

2. EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

The Company assumes no liability for loss or damage by reason of the following

(a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records

(b) Unpatented mining claims reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water

(c) Title to any property beyond the lines of the land expressly described in the description set forth in this Guarantee, or title to streets roads avenues lanes ways or waterways on which such land abuts or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement, or any rights or easements therein unless such property rights or easements are expressly and specifically set forth in said description

(d) Defects liens encumbrances adverse claims against the title as guaranteed or other matters (1) created, suffered assumed or agreed to by one or more of the Assured or (2) resulting in no loss to the Assured

3. PROSECUTION OF ACTIONS

(a) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein guaranteed and the Company may take any appropriate action under the terms of this Guarantee whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.

(b) In all cases where the Company does so institute and prosecute any action or proceeding the Assured shall permit the Company to use at its option, the name of the Assured for such purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred

4. NOTICE OF LOSS - LIMITATION OF ACTION

A statement in writing of any loss or damage for which it is claimed the Company is liable under this Guarantee shall be furnished to the Company within sixty days after such loss or damage shall have been determined and no right of action shall accrue to the Assured under this Guarantee until thirty days after such statement shall have been furnished and no recovery shall be had by the Assured under this Guarantee unless action shall be commenced thereon within two years after expiration of said thirty day period. Failure to furnish such statement of loss or damage or to commence such action within the time hereinbefore specified shall be a conclusive bar against maintenance by the Assured of any action under this Guarantee

5. OPTION TO PAY, SETTLE OR COMPROMISE CLAIMS

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage the Company shall have the option to purchase the indebtedness secured by said mortgage. Such purchase payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage securing the same to the Company upon payment of the purchase price

6. LIMITATION OF LIABILITY - PAYMENT OF LOSS

(a) The liability of the Company under this Guarantee shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall such liability exceed the amount of the liability stated on the face page hereof

(b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorney's fees in litigation carried on by the Assured with the written authorization of the Company.

(c) No claim for damages shall arise or be maintainable under this Guarantee (1) if the Company after having received notice of an alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect lien or encumbrance within a reasonable time after receipt of such notice or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.

(d) All payments under this Guarantee, except for attorneys' fees as provided for in paragraph 6(b) hereof, shall reduce the amount of the liability hereunder pro tanto, and no payment shall be made without producing this Guarantee for indorsement of such payment unless the Guarantee be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company

(e) When liability has been definitely fixed in accordance with the conditions of this Guarantee, the loss or damage shall be payable within thirty days thereafter

7. SUBROGATION UPON PAYMENT OR SETTLEMENT

Whenever the Company shall have settled a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to such claim had this Guarantee not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. The Assured if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right or subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving such rights or remedies

8. GUARANTEE ENTIRE CONTRACT

Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Guarantee

No provision or condition of this Guarantee can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary an Assistant Secretary or other validating officer of the Company

9. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at the office which issued this Guarantee or to

SECURITY UNION TITLE INSURANCE COMPANY
Claims Department
P O Box 2233
Los Angeles California 90051