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6

7 BEFORE THE CALIFORNIA  
8 STATE WATER RESOURCES CONTROL BOARD  
9

10 Petition for Review of Failure to Act )  
by the County of Alameda Health Care ) No.  
11 Services Agency re: Corrective Action )  
Order for Harrison Street Garage, 1432 )  
12 Harrison Street, Oakland, California )  
94612 and Request to Hold Petition in )  
13 Abeyance )  
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I

NAMES AND ADDRESS OF PETITIONERS

Alvin H. Bacharach  
Barbara Jean Borsuk  
383 Diablo Road, No. 100  
Danville, CA 94526

II

SPECIFIC INACTION OF THE LOCAL AGENCY  
WHICH THE STATE BOARD IS REQUESTED TO REVIEW

The specific inaction presented for review is the refusal of the Alameda County Health Care Services Agency ("the County") to name on the County's Order Douglas Motor Service and its partners Leland Douglas, Ronald Douglas and David Flett (collectively "Douglas") as responsible parties regarding the hydraulic lift and tank on the main floor and the underground piping and waste oil system in the basement of Petitioners' multi-story parking garage located at 1432 Harrison St. in Oakland ("the garage"). The County's Order is contained in a letter dated February 5, 1993. See Petition Exhibit "A".

III

DATE ON WHICH THE LOCAL AGENCY ACTED

The County's Order is dated February 5, 1993.

1 IV

2 FULL AND COMPLETE STATEMENT OF REASONS

3 THE FAILURE TO ACT WAS IMPROPER

4  
5 A. Introduction

6  
7 In September of 1990, Petitioners Alvin Bacharach and  
8 Barbara Borsuk (the "Owners") were named by the County as the  
9 sole responsible parties for undertaking corrective action with  
10 respect to underground gasoline storage tanks in the garage.  
11 Although the Owners maintained from the beginning that Douglas,  
12 their tenant for 16 years, should be named as a responsible  
13 party, they complied with the County's Order and shouldered the  
14 site investigation and remediation costs alone.

15  
16 After the Owners' appeal to this Board on the issue of  
17 Douglas' responsibility for the underground gasoline storage  
18 tanks, the County finally named Douglas in its February 5, 1993  
19 Order as a responsible party with respect to these tanks.  
20 However, the Order does not address the fact that, since this  
21 Board's decision was issued, the County has advised the Owners  
22 that it expects all areas of the garage to be investigated and  
23 remediated, including the hydraulic lift and tank on the main  
24 floor and the underground piping and waste oil system in the  
25 basement of the garage.

26

1           The Owners have complied with the County's directives  
2 and have undertaken the investigation of these contaminated areas  
3 without a formal Order. At the same time, however, the Owners  
4 have presented abundant evidence to the County that Douglas is  
5 responsible for the contamination in these areas. The County's  
6 Order, nonetheless, only addresses the issue of Douglas'  
7 responsibility for the underground gasoline storage tanks. The  
8 Order does not include or even mention the hydraulic lift and  
9 tank and the waste oil piping and tanks in the basement. The  
10 County's Order should include these areas as well.

11

12           Since the Owners are currently engaged in discussions  
13 with the County about Douglas' responsibility for the  
14 contamination in these two areas of the garage, the Owners  
15 respectfully request this Petition be held in abeyance for 30  
16 days so that these issues can, if possible, be resolved at the  
17 County level. The Owners have filed this Petition to preserve  
18 their rights to appeal to the State Board under Health & Safety  
19 Code §25297.1, Water Code §13320, and California Code of  
20 Regulations, Title 23, §2050.

21

22           On March 5, 1993 the Douglas parties also petitioned  
23 for review of the County's Order insofar as it names Douglas as a  
24 responsible party with regard to the gasoline tank releases.  
25 Since the issue of Douglas' responsibility for the gasoline  
26 releases is closely related to Douglas' responsibility for the

1 hydraulic lift and tank and basement oil disposal system, the  
2 Board should resolve all of these issues at once. The County,  
3 however, is continuing its discussions with the Owners, and  
4 presumably will with Douglas as well, regarding the hydraulic  
5 lift and basement oil system. To promote economy and efficiency  
6 for all concerned -- including the State Board -- it therefore  
7 makes sense for the Board to defer action on both the Owners' and  
8 Douglas' Petitions for 30 days so that the County will have the  
9 opportunity to resolve at least the hydraulic lift and waste oil  
10 tank matters.

11  
12 The Owners therefore respectfully request that the  
13 Board hold both Petitions in abeyance for 30 days.

14  
15 B. Factual Background and Procedural History

16  
17 Petitioners Alvin Bacharach and Barbara Borsuk have  
18 owned the garage since 1945 and have continuously used it as a  
19 rental property. Tenants of the property have used it as a  
20 parking garage, gasoline station and auto repair shop. It was  
21 equipped with two gasoline pumps, two underground gasoline  
22 storage tanks, two waste oil tanks beneath the concrete slab in  
23 the garage basement and one or two hydraulic lifts and fluid  
24 tanks under the cement floors in the auto service area.

25  
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1           In 1972, the Owners leased the garage to Douglas.  
2 During its 16-year tenancy, Douglas operated the gasoline  
3 facilities, retained all gasoline revenues, and subleased  
4 portions of the garage for auto repairs, servicing and painting.  
5 Throughout its tenancy, Douglas' leases with the Owners required  
6 it to operate the garage in conformity with all laws, to maintain  
7 and repair the premises, and to indemnify the Owners for any  
8 liability arising out of conditions in the garage, including  
9 leakage.

10

11           On July 31, 1990, the County issued a Notice of  
12 Violation regarding the underground gasoline storage tanks in the  
13 garage. See Pet. Exh. B. On September 24, 1990, the County  
14 issued a Cleanup Order, naming the Owners as the sole parties  
15 responsible for taking corrective action. See Pet. Exh. C. The  
16 September 24, 1990 Order referred only to the underground  
17 gasoline storage tanks and did not address other tanks and  
18 contamination on the property.

19

20           At a meeting on January 14, 1991, the Owners requested  
21 that the County name Douglas as a responsible party. The  
22 County, nevertheless, refused to name Douglas, and the Owners  
23 filed a Petition to the State Water Resources Control Board (the  
24 "Board") on February 7, 1991, pursuant to Health & Safety Code  
25 Section 25299.37(d). After extensive briefings and a hearing

26

1 involving the County, the Owners and Douglas, the Board issued  
2 Order No. WQ 91-07 on June 20, 1991. The Board concluded:

3  
4           Petitioner's contention that Douglas ought to be added  
5 to the County's order appears to have merit. If the  
6 County has substantial evidence that the leaks from the  
underground tanks occurred during the time Douglas was  
operating them, the County should add Douglas to its  
order.

7  
8           Since the Board's Order, it has become clear from the  
9 County's directives to the Owners that the County expects all  
10 areas of the garage to be investigated and cleaned up. See, eg.,  
11 County letters dated July 12, 1991, September 3, 1991 and October  
12 29, 1991, attached collectively hereto as Pet. Exh. D. The  
13 County's July 31, 1990 Notice of Violation and September 24, 1990  
14 Cleanup Order did not explicitly address other areas of the  
15 garage, but the County has since made clear that it expects the  
16 tanks in these other areas to be removed and the contamination  
17 remediated, even though the County has not formally issued an  
18 order to the Owners, who have cooperated by undertaking this work  
19 without a formal Order.

20  
21           For purposes of this appeal, the Board should treat the  
22 County's numerous directives to the Owners regarding these other  
23 areas of the garage as the equivalent of an Order. Certainly,  
24 the County's directives have had the tone and threat of an Order,  
25 if not the title. If the Board deems a formal Order necessary,  
26 then it can direct the County to issue a Cleanup Order to both  
the Owners and Douglas, even though the Owners have been

1 cooperating fully in the investigation of these contaminated  
2 areas.

3  
4 On October 14, 1992, the Owners presented new evidence  
5 to the County and again requested that Douglas be named in the  
6 County's Order with respect to corrective action to be undertaken  
7 for all contamination on the property. The most important new  
8 evidence was the deposition testimony of Douglas partners Ronald  
9 Douglas and Leland Douglas,<sup>1</sup> in which they admitted that the  
10 underground gasoline storage tanks leaked during their tenancy,  
11 that they knew it, and that the leakage continued for months or  
12 even years before they did anything about it. This testimony  
13 directly contradicted their previous sworn written declaration  
14 and further testimony before the Board.

15  
16 The Owners also presented evidence which demonstrated  
17 Douglas' responsibility for contamination associated with the  
18 hydraulic lift and the underground piping and waste oil system in  
19 the basement. This evidence included the Declaration of William  
20 Thompson, one of Douglas' subtenants, in which Thompson  
21 acknowledged his regular use of the hydraulic lift during his  
22 sublease with Douglas and admitted that he had poured

23  
24 <sup>1</sup> The Douglas depositions will be referred to as "R.D."  
25 for Ron Douglas and "L.D." for Lee Douglas. Excerpts from the  
26 depositions, exhibits and numerous other documents were attached  
to, and may be located in, the Owners' letter to Mark Thompson  
dated October 14, 1992 (Pet. Exh. E) according to the reference  
numbers provided ("Ref. #").



1 approximately 300 gallons of waste oil down a fill pipe near the  
2 lift, at the direction of Douglas personnel.

3

4           The Owners requested that the County name Douglas as a  
5 responsible party as to all three areas of the garage -- the  
6 gasoline tanks, hydraulic lift and tank and the oil piping system  
7 and tanks. On February 5, 1993, the County issued the following  
8 Order:

9

10           The County has been presented substantial evidence  
11 that leaks from the underground gasoline tanks  
12 occurred during the time Douglas Motor Service was  
13 operating them. Therefore, Douglas Motor Service  
14 is a responsible party. Pursuant to Health and  
15 Safety Code Section 25299.37(c), Alvin Bacharach,  
16 Barbara Borsuk, and Douglas Motor Service and Its  
17 Partners shall take appropriate corrective action  
18 in response to the discovery of unauthorized  
19 releases associated with gasoline tanks located at  
20 1432 Harrison St., Oakland, CA. See Pet. Exh. A.

15

16

17           Despite the fact that the Owners presented "substantial  
18 evidence" that Douglas should be named as a responsible party  
19 with respect to the hydraulic lift area and the underground  
20 piping and waste oil system, the County's Order names Douglas as  
21 a responsible party only with regard to unauthorized releases  
22 from the gasoline tanks. By letter dated February 10, 1993, the  
23 Owners therefore requested that the County amend its Order to  
24 name Douglas Motor Services and its partners as responsible  
25 parties with regard to all tanks and contamination in the garage.  
26 See Pet. Exh. F. The Owners also requested, and received, a  
meeting with the County to discuss the amendment. Id. Because

1 the Owners and the County are currently engaged in ongoing  
2 discussions in this regard, the Owners request that this Petition  
3 be held in abeyance for a period of 30 days pending the outcome  
4 of these negotiations. See Declaration of Randall D. Morrison, ¶  
5 7.

6  
7 C. Douglas Should Be Named As a Responsible Party With  
8 Regard To All Contamination In The Garage

9  
10 1. Standard Of Review

11  
12 Water Code Section 13320 governs the Board's review of  
13 the County's failure to name Douglas as a responsible party with  
14 respect to the hydraulic lift and the underground piping and  
15 waste oil system. See, Health & Safety Code Section 25299.37(d).  
16 Pursuant to Health & Safety Code Section 25299.37(c), the  
17 County's decision may be reversed upon a finding that it was  
18 "inappropriate or improper." The Board's standard of review is  
19 similar to the "independent judgment rule" utilized by the  
20 courts. Exxon Company, U.S.A., et al., Order No. WQ 85-7 (August  
21 22, 1985). Under this rule, the Board is permitted to "take a  
22 fresh look at the facts to see if the weight of the evidence  
23 supports the decision." Id. Thus, the Board should not defer to  
24 the County if it disagrees with its conclusion. Id.

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1           2.    Use Of The Hydraulic Lift Area By Douglas And Its  
2                    Subtenants

3  
4           The County named Douglas as a responsible party only  
5 with regard to releases from the gasoline tanks. However, the  
6 Owners also presented substantial evidence as to Douglas'  
7 responsibility for releases from the hydraulic lift and waste oil  
8 tanks. There is abundant evidence in the Douglas partners'  
9 depositions and in a Declaration from one of their subtenants  
10 that the hydraulic lift was used during Douglas' tenancy. There  
11 is also substantial evidence that leakage from the hydraulic lift  
12 occurred during Douglas' tenancy. The evidence includes the  
13 following:

14  
15           Douglas represented to its customers that it offered  
16 "complete auto service facilities on the premises." [Pet. Exh.  
17 E, Ref. #36 (L.D., pp. 144:22-146:22; Exh. 4.)] Similarly,  
18 Douglas advertised that it provided "complete systematized  
19 automotive repair," including batteries, carburetor and  
20 electrical experts, wheel aligning, brake service and body work.  
21 [Pet. Exh. E, Ref. #37 (R.D., pp. 147:5-148:9; Exh. 58.)]

22  
23           One of Douglas' subtenants, William Thompson, subleased  
24 a 1,000 square foot area on the main floor from 1974 to 1975 for  
25 "repairing and servicing" of automobiles. [Pet. Exh. E, Ref. #39  
26 (R.D., pp. 176:13-178:25; Exh. 66.)] The subleased area included

1 " . . . a wash stall, hydraulic hoist stall and all utilities,  
2 fixtures and appliances therein." [Pet. Exh. E, Ref. #39 (R.D.,  
3 pp. 176:15-178:25; Exh. 66 (emphasis added).] This sublease was  
4 entered into at the request of Ronald Douglas' father, Sanford  
5 Douglas, who wrote a letter to Petitioners, stating:

6

7 The mechanic who has been doing repair work for  
8 the last several months has asked us for a one-  
9 year sublease with a one-year option at the same  
10 rental as presently exists, in order that he may  
11 have some security. His interest is to be able to  
12 purchase some new equipment.

13 He is a good man and I would like to be able to  
14 keep him.

15 He occupies the lubrication rack and the spaces of  
16 four cars adjoining. [Pet. Exh. E, Ref. #40  
17 (R.D., pp. 162:21-163:20; Exh. 61. (emphasis  
18 added).)]

19

20 Mr. Thompson has signed a Declaration stating that he  
21 used the hydraulic lift to service about five cars each day and  
22 that he recalls accumulation of what appeared to be oil and water  
23 in the hydraulic lift pit. See Declaration of William A.  
24 Thompson, III, ¶¶ 4, 5, attached hereto as Pet. Exh. G.

25

26 In addition, Douglas had a sublease with American  
International Rent-A-Car which provided that American would  
sublet space for "Automobile Rental Storage and Repai[r] of  
Lessee's own Vehicles." [Pet. Exh. E, Ref. #41 (Sublease, ¶ 6.1,  
Exh. 63; Exh. 62; R.D. 169:5-23.)] American subleased "a portion  
of the main floor, including offices and automobile work areas .

1 . . ." [Pet. Exh. E, Ref. #42, (R.D., pp. 167:10-168:10  
2 (emphasis added).] Douglas, in fact, had two subleases with  
3 American which occupied the premises from 1977 to 1981. Id.  
4

5           The Douglas partners denied any use of the hydraulic  
6 lift in their depositions and in Leland Douglas' testimony before  
7 the Board. It was not until the Owners, after great  
8 investigative effort, located former subtenant William Thompson,  
9 that Douglas finally acknowledged use of the lift. Since Douglas  
10 did not admit Thompson's use of the lift until the Owners located  
11 Thompson, there is good reason to believe that Douglas has  
12 concealed use of the hydraulic lift by other subtenants as well,  
13 such as American International Rent-A-Car. Douglas' subleases  
14 with American specifically state that this area is subleased for  
15 rental car storage "and repairs." [Pet. Exh. E, Ref.#41  
16 (Sublease, ¶6.1, Exh. 63)]  
17

18           In any event, there is clear and undisputed evidence  
19 that Thompson -- whose sublease was with Douglas and not the  
20 Owners -- used the hydraulic lift and performed auto repairs,  
21 resulting in the spillage of oil, grease and other contaminants  
22 during Douglas' tenancy.  
23

24           Thompson's use alone is sufficient to name Douglas as a  
25 responsible party for releases in the hydraulic lift area. The  
26 Board has made clear that a party is responsible for discharges

1 which occur while he is in control of the property, even if the  
2 party did not actively "cause" the discharges, but  
3 merely "permitted" them. See, e.g., U.S. Cellulose and Louis J.  
4 and Shirley D. Smith, Order No. WQ 92-04 (March 19, 1992)  
5 [landowners and tenants may be characterized as dischargers  
6 despite the lack of any direct action causing a discharge, if  
7 they used or had control of the tanks on the premises].

8  
9 Here, Douglas clearly had control over the hydraulic  
10 lift area, since Douglas leased the entire garage and subleased  
11 this specific area to Thompson. Any use of the hydraulic lift by  
12 these subtenants is the responsibility of Douglas, which had the  
13 contractual relationship with the subtenants, as well as overall  
14 responsibility under Douglas' own lease to "maintain and repair"  
15 the entire premises, to comply with "all laws and ordinances,  
16 municipal, state, federal and any other governmental authority"  
17 and to prevent any "nuisance," "waste" or "leakage" on the  
18 premises. [Pet. Exh. E, Ref.#31 (Lease, ¶¶3 and 9)].

19  
20 This control is sufficient to impose responsibility  
21 under the Board's decisions, because Douglas was in the position  
22 to prevent the releases, even if Douglas did not personally  
23 "cause" the releases. For example, in San Diego Unified Port  
24 District, Order No. WQ 98-12 (August 17, 1989) the Board  
25 concluded:

26

1 The question is whether the Port District  
2 'caused or permitted' the copper to be  
3 discharged to the Bay. There is no question  
4 that the Port District permitted the  
5 discharges to occur. This Board has  
6 consistently taken the position that a  
7 landowner who has knowledge of the activity  
8 taking place and has the ability to control  
9 the activity, has 'permitted' the discharge  
10 within the meaning of Section 13304. In such  
11 case, we have concluded that it is  
12 appropriate to hold the landowner responsible  
13 for the discharges which it permitted.  
14 (Emphasis added).

15 The same is true for discharges permitted by a lessee  
16 and sublessor. Here, Douglas was in control of the entire garage  
17 and had the responsibility to maintain the tanks and piping and  
18 to prevent any disposal of wastes which could create a "nuisance"  
19 condition.

20 As the Board observed in its previous Order in this  
21 case, it was not necessary for Douglas to have "actual knowledge"  
22 that contamination was occurring for Douglas to be named as a  
23 "responsible party." Alvin Bacharach and Barbara Borsuk, Order  
24 No. WQ 19-07 (June 20, 1991). Since Douglas was aware of its  
25 subtenants' use of the hydraulic lift and repair and servicing of  
26 vehicles, Douglas knew or should have known that there were risks  
27 of contamination associated with these activities. This  
28 knowledge is sufficient to make Douglas a responsible party for  
29 contamination arising out of use of these facilities in the  
30 garage. As the Board stated in John Stuart, Order No. WQ 86-15  
31 (September 18, 1986):

1  
2 "Actual knowledge of the contamination need  
3 not be shown where it is reasonable for a  
4 person to be aware of the dangers generally  
5 inherent in the activity. In Order No. WQ  
6 84-6 we examined factors involving general  
7 knowledge of the operation and normal dangers  
8 common to it and found that one who should  
9 have known is in the same position as the one  
10 who did know." (Stuart, supra, Order No. WQ  
11 86-15, n.3).

12  
13 Here, it is undisputed that Douglas had control over  
14 its subtenants' use of the hydraulic lift and other facilities in  
15 the garage. Douglas is therefore responsible for any leakage  
16 resulting from its subtenants' activities. Moreover, it is  
17 reasonable to assume that releases continued throughout Douglas'  
18 tenancy.<sup>2</sup> While Douglas itself may not have used these  
19 facilities, they were within Douglas' control under the lease and  
20 subleases. This control is sufficient to make Douglas  
21 responsible for on-going releases which occurred in these areas,  
22 whether Douglas knew about them or not.

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23 <sup>2</sup> Site investigations conducted by private consultants  
24 confirm significant releases of petroleum hydrocarbons in the lift  
25 area. A report prepared by Subsurface Consultants, Inc. ("SCI")  
26 on October 19, 1990 noted concentrations of 6300 ppm of TOG.  
Studies conducted by RGA, Inc. ("RGA") also confirm the releases  
of petroleum hydrocarbons in the hydraulic lift area. RGA's  
samples showed 135 ppm of TPH-G at 15 feet in B-13 and low  
concentrations in the gasoline and diesel ranges in B-13 at 5' and  
B-14 at 15'. Viewing the SCI and RGA data together, there is  
clear evidence of significant releases at depths of 5-15 feet  
below the hydraulic lift.



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3. Douglas' Responsibility for Waste Oil Tanks and Piping

There is no dispute that waste oil was disposed of on the property during Douglas' tenancy. In his Declaration, William Thompson states that he poured about 300 gallons of waste oil down a drain pipe in the hydraulic lift area at the direction of Douglas personnel. See Thompson Decl., ¶ 6, attached hereto as Pet. Exh. G. This drain pipe is connected to the waste oil tanks in the basement. As noted by JR Associates in an August 27, 1990 Report on their survey of the property: "The most significant buried pipe appeared to connect an abandoned drain near the car lifts to two waste oil tanks buried near the southern corner of the lower level of the garage . . ."

It is reasonable to assume that Thompson's activities contributed in some measure to the contamination. It is clear that he used the drain pipe and waste oil tanks, and it is clear that releases of waste oil have occurred from both the tanks and

1 piping.<sup>3</sup> Contamination in both areas has been confirmed by SCI,  
2 RGA, and another consultant, SCS Engineers, Inc. ("SCS").  
3

4           Moreover, it seems likely that releases of hydrocarbons  
5 from the waste oil tanks and drain lines continued throughout  
6 Douglas' tenancy. It may be that releases occurred before  
7 Douglas' tenancy as well, but there is no reason to believe that  
8 the releases stopped during Douglas' time on the property.

9 Although these releases would have continued irrespective of  
10 activities of Douglas and its subtenants, they occurred during a  
11 16-year period when Douglas had contractual, statutory and common  
12 law duties to prevent these releases. The releases included  
13 leakage of heavy petroleum hydrocarbons the entire length of the  
14 drain pipe in the basement and around the waste oil tanks  
15 themselves. Since it is clear that one of Douglas' subtenants  
16 used the waste oil system and dumped some 300 gallons of waste  
17 oil into it, there is good reason to believe that the use of the  
18 facilities during Douglas' tenancy contributed to the  
19 contamination. Douglas is therefore responsible for

20 \_\_\_\_\_  
21 <sup>3</sup> Thompson's disposal of 300 gallons was significant. That  
22 quantity is equal to 25% of the total waste oil (1300 gallons)  
23 pumped out of the tanks in 1990. The State Board's decisions make  
24 clear that, where there has been use of a waste system later  
25 found to be leaking, it is reasonable to assume that some  
26 leakage occurred during that use. See e.g., Arthur Spitzer,  
et al., Order No. WQ 89-8 (May 16, 1989) [where party operated dry  
cleaning business during time that drainage system was connected  
to surface disposal system, it is "reasonable to conclude" that  
the party "disposed of at least some of the PCE found on the  
Property"]. The same is true here. It is reasonable to assume  
that some of the 300 gallons dumped by Thompson ended up in soils  
around the drain pipe and waste oil tanks.

1 contamination which Douglas "permitted" during its control, as  
2 well as for contamination caused by Douglas' subtenants'  
3 activities. See San Diego Unified Port District, supra, Order  
4 No. WQ 98-12.

5  
6 Finally, the subtenants' disposal of waste oil and  
7 ongoing releases from the storage tanks were not the only  
8 hydrocarbon releases in the basement during Douglas' tenancy.  
9 There was also a continuous release of waste oil through leakage  
10 from autos in long-term storage during the 16-year tenancy. Ron  
11 Douglas admitted that large portions of the basement were covered  
12 with waste oil and other fluids which were occasionally cleaned  
13 up with solvents but otherwise allowed to stand. [Pet. Exh. I,  
14 (R.D. pp. 439-444.)] This continuous and substantial leakage of  
15 waste oil would very likely contaminate soil beneath the cement  
16 floor. Douglas therefore caused or permitted releases of waste  
17 oil quite apart from ongoing leakage from the storage tanks and  
18 Douglas' subtenants' use of the waste oil system.

19  
20 Data compiled by three consultants confirms significant  
21 releases of petroleum hydrocarbons in the basement. In SCI's  
22 Report of October 19, 1990, SCI reported up to 140 ppm in the  
23 "kerosene" range at B-9 near the waste oil tanks. Low  
24 concentrations of PCBs (9 ppb) were also reported.

25  
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1           An investigation undertaken by SCS corroborates SCI's  
2 findings. In its Report of September 13, 1991 on "Sampling and  
3 Analysis of Contents, Waste Oil Tanks," SCS noted the  
4 ". . . presence of oil and grease, diesel, and volatile  
5 hydrocarbons," along with gasoline in the tanks. A variety of  
6 hydrocarbons were apparently disposed of in the tanks, and this  
7 usage is consistent with SCI's finding of petroleum hydrocarbons  
8 in the "kerosene" range in surrounding soils.

9  
10           RGA's investigation confirmed releases of petroleum  
11 hydrocarbons at the waste oil tanks and along the buried piping  
12 in the basement. Samples B-1 through B-8 were taken at 20-foot  
13 intervals along the drain pipe, and these samples showed low  
14 levels of gasoline up to 27.3 ppm and diesel range hydrocarbons  
15 up to 55.7 ppm. Soil samples at the waste oil tanks, B-9 and B-  
16 10 at 5' and 8' respectively, indicated petroleum hydrocarbons in  
17 the gasoline and diesel ranges up to 109 ppm. The borings along  
18 the piping also indicated oil and grease from 55 to 221 ppm.

19  
20           In summary, there is ample evidence of petroleum  
21 hydrocarbon contamination in the basement. It is reasonable to  
22 assume that some of these releases occurred as a result of use by  
23 Douglas' subtenants or ongoing leakage during Douglas' 16-year  
24 tenancy. Finally, there is clear evidence of releases of waste  
25 oil in the basement from Douglas' own long-term storage of autos.

26

1           4.    The Substantial Evidence Standard

2  
3           Douglas should be named in the Order with respect to  
4 the hydraulic lift on the main floor and the underground piping  
5 and waste oil system in the basement if there is "substantial  
6 evidence" which indicates that Douglas has responsibility for  
7 same.   See Exxon Company, U.S.A. et. al., supra, Order No. WQ  
8 85-7. To determine whether evidence is "substantial," the Board  
9 has stated that, " . . . we look at the record to determine  
10 whether, in light of the record as a whole, there is a reasonable  
11 and credible basis to name a party." U.S. Cellulose, supra,  
12 Order No. WQ 92-04. Similarly, the Board has stated that  
13 "[s]ubstantial evidence does not mean proof beyond a doubt or  
14 even a preponderance of evidence. Substantial evidence is  
15 evidence upon which a reasoned decision may be based." Robert S.  
16 Taylor and John F. Bosta, et al., Order No. WQ 92-14 (October 22,  
17 1992) (emphasis added). See also, Stinnes - Western Chemical  
18 Corporation, Order No. WQ 86-16 (September 18, 1986).

19  
20           The evidence here shows beyond dispute that the  
21 hydraulic lift and tank, drain line and waste oil tanks were used  
22 during Douglas' tenancy, and it is probable that releases of  
23 petroleum hydrocarbons occurred as the result of this use.  
24 Furthermore, it is likely that ongoing releases from  
25 these facilities occurred during Douglas' 16-year tenancy, and  
26 Douglas had the contractual and legal duty to prevent these

1 releases. Douglas is therefore responsible for these releases,  
2 whether Douglas knew about them or not. See U.S. Cellulose,  
3 supra, Order No. WQ 92-04, San Diego Unified Port District,  
4 supra, Order No. WQ 98-12, and Bacharach, supra, Order No. NQ  
5 19-07. Finally, it is likely that Douglas itself caused the  
6 contamination of soil beneath the basement floor by allowing the  
7 continuous release of waste oil through leakage from autos in  
8 long-term storage.

9  
10 In its Policies and Procedures for Investigation  
11 and Cleanup and Abatement of Discharges under Water Code Section  
12 13304 (Resolution No. 92-49, June, 1992), the Board stated that  
13 the Regional Boards shall:

14  
15 Use any relevant evidence, whether direct or  
16 circumstantial, in order to establish the  
17 existence of a discharge or threatened  
18 discharge or the source of a discharge. Any  
19 such determination must be supported by  
20 substantial evidence. (Policies &  
21 Procedures, p. 5; emphasis added).

22  
23 The Policies & Procedures also list various types of  
24 acceptable evidence, including the following:

- 25 1. Documentation of historical or  
26 current activities, waste  
characteristics, chemical use,  
storage or disposal information, as  
documented by public records,  
responses to questionnaires, or  
other sources of information;

- 1           2.    Site characteristics and location  
2            in relation to other potential  
              sources of a discharge;
- 3           3.    Hydrologic and hydrogeologic  
4            information, such as differences in  
              upgradient and downgradient water  
5            quality.
- 6           4.    Industry-wide operational practices  
7            that have historically led to  
8            discharges, such as leakage of  
9            pollutants from wastewater  
10           collection and conveyance systems,  
11           sumps, storage tanks, landfills,  
              and clarifiers;
- 12           5.    Evidence of poor management of  
13            materials or wastes, such as  
14            improper storage practices or  
15            inability to reconcile inventories;
- 16           6.    In conjunction with other evidence,  
17            lack of documentation of  
18            responsible management of materials  
19            or wastes, such as lack of  
20            manifests or lack of documentation  
21            of proper disposal;
- 22           7.    Physical evidence, such as  
23            analytical data, soil or pavement  
24            staining, distressed vegetation, or  
25            unusual odor or appearance;
- 26           8.    Reports and complaints;
9.    Other agencies' records of possible  
              or known discharge; and
10.  In conjunction with other evidence,  
              refusal or failure to respond to  
              Regional Water Board inquiries.  
              (Id., pp.5-6; emphasis added).

23                   In the present case, there is "substantial evidence"  
24                   against Douglas in several of these categories.  First, there is  
25                   documentation of "historical use" of all the garage facilities by  
26                   Douglas or its subtenants.  Second, Douglas and its subtenants

1 clearly engaged in "operational practices" that have historically  
2 led to discharges. Third, there is uncontradicted evidence of  
3 "poor management of materials or wastes."  
4

5           There is also "lack of documentation of responsible  
6 management of materials or wastes," including the absence of any  
7 documentation as to disposal of used oil. Further, there is  
8 abundant "physical evidence, such as analytical data, soil  
9 or pavement staining" indicating leakage from the lift area and  
10 in the basement. In short, the evidence against Douglas derives  
11 from a number of reliable sources, direct and circumstantial,  
12 which have been endorsed by the Board.

13  
14 D.   Conclusion  
15

16           Douglas has responsibility for activities in all areas  
17 of the garage and for contamination in each of those areas. In  
18 these circumstances, the County should name Douglas on its Order  
19 generally, and the County should not attempt to parse out  
20 Douglas' responsibility area by area or tank by tank. There is  
21 substantial evidence that Douglas and its subtenants used and  
22 contaminated all the major areas in the garage.

23  
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25  
26



1           Moreover, Douglas and the Owners can determine their  
2     respective shares of responsibility in the pending civil suit.<sup>4</sup>  
3     It is the Board's obligation to name all appropriate parties and  
4     not attempt to allocate among them. In fact, it is the Board's  
5     policy not to apportion responsibility among the parties. Zoecon  
6     Corporation, WQ 86-2 (February 20, 1986); Santa Clara  
7     Transportation Agency, WQ 88-2 (March 17, 1988).

8  
9           Since the Owners and the County are engaged in  
10    continuing discussions as to Douglas' responsibility for  
11    contamination of the hydraulic lift and basement, the Owners  
12    respectfully request that the Board hold this Petition in  
13    abeyance for a period of 30 days while the Owners try to resolve  
14    these issues at the local level. By granting this extension, the  
15    Board will provide the opportunity for the County and all  
16    responsible parties to try to reach agreement on these matters.  
17    See, Morrison Decl. ¶ 7.

18  
19  
20  
21           <sup>4</sup> In April, 1990, the Owners filed an unlawful detainer  
22    action against a subsequent tenant, Steven Davis, for failure to  
23    pay rent. Davis then filed a separate action against the Owners  
24    seeking, inter alia, rescission of his lease. The two lawsuits  
25    were then consolidated, and the Owners' action was converted to  
26    one for damages instead of unlawful detainer. Davis then filed a  
   cross-complaint against the Owners for "toxic torts" alleging he  
   was exposed to numerous hazardous substances in the garage. The  
   Owners then cross-complained against Douglas. The consolidated  
   cases are pending in the Alameda County Superior Court and are  
   entitled Bacharach v. Davis, Consolidated Case Nos. 670066-3 and  
   666290-3.

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V

THE MANNER IN WHICH PETITIONER IS AGGRIEVED

Petitioners are named as responsible parties in the County's September 24, 1990 Order. The high cost of investigation and cleanup make it imperative that all responsible parties be named in the Order with respect to all aspects of the cleanup, including the hydraulic lift and tank on the main floor and the underground piping and waste oil system in the basement. The County's decision to name Douglas only with respect to the underground gasoline tanks imposes an unreasonable and inequitable burden on Petitioners.

VI

SPECIFIC ACTION BY THE STATE BOARD REQUESTED BY PETITIONERS

Petitioners request that the Board name Douglas in the County's February 5, 1993 Order as a responsible party with respect to all aspects of the site investigation and remediation, including the contamination associated with the hydraulic lift and tank on the main floor and the underground piping and waste oil system in the basement.

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VII

STATEMENT OF POINTS AND AUTHORITIES

Please refer to the Points and Authorities discussed under Section V.

VIII

LIST OF PERSONS HAVING AN INTEREST IN THE PROJECT

The individuals known to have an interest in this Petition include:

Mr. Leland Douglas  
Douglas Parking Services  
1721 Webster Street  
Oakland, CA 94612

Mr. Ron Douglas  
Douglas Parking Services  
1721 Webster Street  
Oakland, CA 94612

Mr. Paul M. Smith  
Hazardous Materials Specialist  
Alameda County Health Care  
Services Agency  
Hazardous Materials Program  
Department of Environmental Health  
80 Swan Way, Room 200  
Oakland, Ca 94621

Gilbert A. Jensen, Esq.  
Sr. Deputy District Attorney  
Consumer and Environmental Protection Div.  
7677 Oakport Street, Suite 400  
Oakland, CA 94621

Petitioners have requested the County to prepare a supplemental list of persons, if any, known to the County to have an interest

1 in the subject matter of this Petition pursuant to 23 C.C.R. §  
2 2050(a)(8). See Pet. Exh. H.

3  
4 IX

5 STATEMENT RE: TRANSMITTAL OF PETITION

6  
7 A copy of this Petition has been forwarded to the  
8 Regional Water Quality Control Board, San Francisco Bay Area  
9 Region, 2101 Webster St., Suite 500, Oakland, California and to  
10 the Alameda County Health Care Services Agency, Hazardous  
11 Materials Program, 80 Swan Way, Room 200, Oakland, California  
12 92641. A copy has also been sent to the Alameda County District  
13 Attorney's Office, Consumer and Environmental Protection  
14 Division, 7677 Oakport Street, Suite 400, Oakland, California  
15 94621. Finally, a copy has been sent to Messrs. Ron and Leland  
16 Douglas, c/o Mr. William Trinkle, Esq., their attorney. See  
17 Proof of Service attached hereto as Pet. Exh. J.

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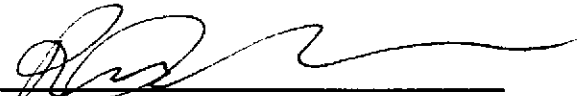
X

REQUEST TO COUNTY FOR PREPARATION OF THE RECORD

Petitioners have requested the County to prepare the County's record in this matter. See Pet. Exh. H.

DATED: March 8, 1993.

CROSBY, HEAFEY, ROACH & MAY  
Professional Corporation

By   
\_\_\_\_\_  
Randall D. Morrison  
Attorneys for Petitioners  
Alvin Bacharach and  
Barbara Borsuk

1 Randall D. Morrison  
Janet C. Absher  
2 CROSBY, HEAFEY, ROACH & MAY  
1999 Harrison Street  
3 Oakland, CA 94612-3573  
(510) 763-2000

4 Attorneys for Petitioners  
5 Alvin H. Bacharach and Barbara Jean Borsuk

6  
7 BEFORE THE CALIFORNIA  
8 STATE WATER RESOURCES CONTROL BOARD

9  
10 Petition for Review of Failure to Act )  
by the County of Alameda Health Care ) No.  
Services Agency re: Corrective Action )  
11 Order for Harrison Street Garage, 1432 )  
Harrison Street, Oakland, California )  
12 946512 and Request to Hold Petition in )  
Abeyance )

13  
14 DECLARATION OF RANDALL D. MORRISON

15  
16 I, Randall D. Morrison, say:

17  
18 1. I am a director of the law firm of Crosby, Heafey,  
19 Roach & May Professional Corporation, attorneys for Petitioners  
20 Alvin H. Bacharach and Barbara Jean Borsuk in this action. If  
21 called upon to testify as to the matters set forth herein, I  
22 would do so competently, and of my own personal knowledge.

23  
24 2. Attached to this Petition as Exhibit A is a true  
25 and correct copy of a letter dated February 5, 1993 from Mr. Paul  
26 Smith of the Alameda County Health Care Services Agency

1 ("County"), which letter contains the Order which is the subject  
2 of this Petition.

3

4 3. Attached to this Petition as Exhibit B is a true  
5 and correct copy of the County's July 31, 1990 Notice of  
6 Violation to Petitioners Alvin H. Bacharach and Barbara Jean  
7 Borsuk.

8

9 4. Attached to this Petition as Exhibit C is a true  
10 and correct copy of the County's September 24, 1990 Order to  
11 Petitioners Alvin H. Bacharach and Barbara Jean Borsuk.

12

13 5. Attached collectively to this Petition as Exhibit  
14 D are true and correct copies of three letters from the County to  
15 Petitioners' consultant, Mr. John Cummings, dated July 12, 1991,  
16 September 3, 1991 and October 29, 1991, respectively.

17

18 6. Attached to this Petition as Exhibit E is a true  
19 and correct copy of a letter dated October 14, 1992 which I sent  
20 to Mr. Mark Thomson of the Alameda County District Attorney's  
21 Office, Consumer and Environmental Protection Division,  
22 including the references to documentary evidence which were  
23 attached to that letter.

24

25 7. After receiving the County's Order dated February  
26 5, 1993, I wrote a letter dated February 10, 1993 to Mr. Gilbert

1 A. Jensen of the Alameda County District Attorney's office,  
2 Consumer and Environmental Protection Division, in which I  
3 requested, on behalf of Petitioners, that the County amend its  
4 Order to name Douglas Motor Services and its partners as  
5 responsible parties with regard to all tanks and contamination in  
6 the garage. A true and correct copy of the February 10, 1993  
7 letter is attached to this Petition as Exhibit F. I then had a  
8 lengthy meeting with Mr. Paul Smith in which we reviewed the  
9 evidence in support of Petitioners' position. We agreed to  
10 continue our discussions, and I stated that I would submit  
11 another letter to Mr. Smith explaining Petitioners' position in  
12 greater detail. Once Mr. Smith has had an opportunity to review  
13 this letter, I expect that a follow-up meeting with Messrs. Smith  
14 and Jensen will be scheduled. Therefore, the Owners respectfully  
15 request that the Board hold this Petition in abeyance for a  
16 period of 30 days while the Owners attempt to resolve these  
17 issues at the local level.

18

19 8. Attached to this Petition as Exhibit G is a true  
20 and correct copy of the Declaration of William A. Thompson, III.

21

22 9. Attached to this Petition as Exhibit H is a true  
23 and correct copy of a letter dated March 4, 1993 which I sent to  
24 Mr. Paul Smith of the Alameda County Health Care Services Agency.

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10. Attached to this Petition as Exhibit I are true and correct copies of pages 439 - 444 of the transcript for the Deposition of Ron Douglas taken on July 2, 1992 in the civil suit entitled Bacharach v. Davis, Consolidated Case Nos. 670066-3 and 666290-3, pending in the Alameda County Superior Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 8, 1993

  
\_\_\_\_\_  
Randall D. Morrison

**ALAMEDA COUNTY  
HEALTH CARE SERVICES**



**AGENCY**

DAVID J. KEARS, Agency Director

Post-Net Brand fax transmittal memo 7571		# of pages	2
To	Randall Morrison	From	Paul Smith
Cc	Crosby et al.	Co.	Alm Co Hlth. Serv.
Dept.		Phone #	271-4320
Fax #	273-8866	FAX #	509-4757

February 5, 1992

Mr. Randall Morrison Esq.  
Crosby, Heafy, Roach & May  
1999 Harrison Street  
Oakland, CA 94612-3573

Mr. William Trinkle Esq.  
Randick & ODea  
1800 Harrison Street, Suite 1771  
Oakland, CA 94612

11222000  
80 Swan Way, Rm. 200  
Oakland, CA 94621  
(510) 271-4320

COPY

**Re: 1432 Harrison Street, Oakland, CA 94612**

On September 24, 1990, the Alameda County Department of Environmental Health issued an order pursuant to California Health and Safety Code Section 25299.37(c) ordering Alvin Bacharach and Barbara Borsuk, the property owners of 1432 Harrison St., Oakland, to take appropriate corrective action in response to the discovery of unauthorized releases associated with gasoline tanks located at the Harrison St. property.

On February 7, 1991, Mr. Bacharach and Ms. Borsuk, pursuant to Health and Safety Code Section 25299.37(d), petitioned the State Water Resources Board requesting the Board name Douglas Motor Services, a 16 year tenant of the Harrison St. property, as the primary responsible party.

The Board issued Order No. WQ 91-07 on June 20, 1991, stating in part:

In many cases we have deemed it reasonable to place one party in a position of secondary responsibility... We find no basis for suggesting that the County do that in this case.

Petitioner's contention that Douglas ought to be added to the County's order appears to have merit. If the County has substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them, the County should add Douglas to its order. (Order, p.4)

From June 20, 1991 until October 14, 1992, no new evidence on the responsible party issue was submitted to the Alameda County Department of Health.

On October 14, 1992, Mr. Bacharach and Ms. Borsuk presented new evidence to the Alameda County Department of Health and requested that Douglas Motor Service and its partners be named primary responsible parties for appropriate corrective action for unauthorized releases associated with gasoline tanks.

YAK--ARCHIVED

5 FEB 95 12:14

Mr. Morrison  
Mr. Trinkle  
February 5, 1993  
page 2 of 2

On January 15, 1993, Douglas Motors Service presented evidence to the Alameda County Department of Health in arguing against adding Douglas Motor Service as a responsible party for appropriate corrective action for unauthorized releases associated with gasoline tanks.

On January 29, 1993, Mr. Bacharach and Ms. Borsuk replied to the January 15, 1993 Douglas Motors Service presentation.

**Order:**

The County has been presented substantial evidence that leaks from the underground gasoline tanks occurred during the time Douglas Motor Service was operating them. Therefore, Douglas Motor Service is a responsible party. Pursuant to Health and Safety code Section 25299.37(c), Alvin Bacharach, Barbara Borsuk, and Douglas Motor Service and Its Partners shall take appropriate corrective action in response to the discovery of unauthorized releases associated with gasoline tanks located at 1432 Harrison St., Oakland, CA.

Sincerely,



Paul M. Smith  
Senior Hazardous Materials Specialist

**cc:**

Gil Jensen Esq., Alameda County District Attorneys Office,  
Consumer and Environmental Protection, 7677 Oakport  
Dr., Suite 400, Oakland, CA 94621  
Alvin Bacharach, 383 Diablo Road, #100, Danville, CA 94526  
Barbara Jean Borsuk, 383 Diablo Road, #100, Danville, CA  
94526  
Leland Douglas, Douglas Parking Company, 1721 Webster  
Street, Oakland, CA 94612  
Lester Feldman, CA Regional Water Quality Control Board, San  
Francisco Bay Region, 2101 Webster St., Fifth Floor,  
Oakland, CA 94612

ALAMEDA COUNTY  
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



Certified Mailer #P 062 128 227

DEPARTMENT OF ENVIRONMENTAL HEALTH

Hazardous Materials Program

80 Swan Way, Rm. 200

Oakland, CA 94621

(415) 271-4326

July 31, 1990

Mr. Alvin Bacharach & Ms. Barbara Borsuk  
383 Diablo Road #100  
Danville, CA 94526

**\*\*\*Notice of Violation\*\*\***

**RE: Harrison Street Garage, 1432 Harrison St., Oakland, CA 94612**

Dear Mr. Bacharach and Ms. Borsuk:

This is a follow-up letter to an inspection performed on Friday, July 27, 1990, with regard to an expired underground storage tank permit at the above facility.

Upon inspection, it appears that there are additional underground tanks on the property which are currently unpermitted. You are currently in violation of the Health and Safety Code, Section 25284.

The following concerns need to be addressed regarding this location:

An investigation of this site needs to be performed to find out the correct number of tanks which currently exist at the above location.

In accordance with the California Code of Regulations (CCR), Title 23, Chapter 3, Subchapter 16 Underground Tank Regulations, you must perform one of the following actions:

1. Submit a tank closure plan to this Department as required by Article 7, 2670, or
2. Apply for a permit as required by Article 10, 2710. (Permit applications are attached)

If the single walled tanks are to be permitted, they must be precision tested annually, piping must have leak detection devices (if delivery lines are pressurized), fuel inventory must be monitored daily and quarterly monitoring reports must be sent to this office.

Mr. Alvin Bacharach & Ms. Barbara Borsuk  
383 Diablo Road #100  
Danville, CA 94526  
July 31, 1990  
Page 2 of 2

Our files show no past records of any tank tightness tests, line leak detection tests, or records of quarterly reports. You are currently in violation of Title 23 of the CA Code of Regulations, Sections 2712, 2651, 2643, 2644 & 2632.

It is our understanding that an investigation is currently underway to determine if there is contamination from the underground tanks at the site. You are required to submit copies of all laboratory analyses of borings, chain of custody, and associated reports. If a leak has occurred, you are required by law, to submit within 5 days, a full written report (including an unauthorized release form). In addition, you will be required to assess the extent of hydrocarbon contamination to soil and groundwater.

According to Section 25299 of the Health and Safety Code (H&SC), any operator of an underground tank system who fails to report an unauthorized release, or fails to permit an inspection of the facility, or to perform any monitoring, testing, or reporting required, shall be liable for a civil penalty of not less than five hundred dollars or more than five thousand dollars for each underground storage tank per day.

You are requested to notify this office in writing within 10 days of the receipt of this letter of your intent with regard to the disposition of the underground tanks at the above location and to inform this office of any contamination problems associated with this site.

Should you have any questions, please contact me at (415) 271-4320.

Sincerely,

*Paul M. Smith*

Paul M. Smith,  
Hazardous Materials Specialist

PMS:mnc

cc: Gil Jensen, Alameda County District Attorney, Consumer and  
Environmental Protection Agency  
Lester Feldman, SFBRWQCB  
Robert Buchman, King, Schapiro, Mittleman & Buchman  
Steve Davis, Leases  
Jonathan Redding, Fitzgerald, Abbot & Beardley  
Files

ALAMEDA COUNTY  
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



*Mark Borsuk*  
922-1485

Certified Mailer P 062 128 176

DEPARTMENT OF ENVIRONMENTAL HEALTH  
Hazardous Materials Program  
80 Swan Way, Rm. 200  
Oakland, CA 94621  
(415)

September 24, 1990

Mr. Alvin Bacharach & Ms. Barbara Borsuk  
383 Diablo Road #100  
Danville, CA 94526

RE: Harrison Street Garage, 1432 Harrison St., Oakland,  
CA, 94612

Dear Mr. Bacharach and Ms. Borsuk:

We have received and approved the tank closure plan for the removal of two gasoline tanks located at the above site submitted by Verls Construction. Before the tank removals can be scheduled the following concerns need to be addressed:

There is some concern of subsurface contamination levels which may cause a human health problem during and after the tank removal. A preliminary subsurface investigation dated August 8, 1990 performed by Subsurface Consultants of the gasoline tanks at the above site identified contamination levels in soil which indicate that high levels of contamination of Total Petroleum hydrocarbon (TPH) and Benzene, Toluene, Ethylbenzene and Xylene (BTEX) are present in the soil from an underground tank leak. Based on the levels of contamination reported it is likely that groundwater has also been impacted.

The levels of contamination present from the tank excavation and stockpiles could present hazards to human health. For example if levels of benzene are determined, via monitoring with Draeger tubes or Organic Vapor Analysis, to exceed the permissible exposure limit (PEL) the stockpiles cannot remain onsite. If the stockpile tailings (which must be covered with visqueen) or tank excavation emit contamination below the PEL the excavation pit can remain open until the chemical analysis results become available so that the characterized soil can be appropriately dealt with. There is some question as to where the stockpiles will be stored and what mitigative measures will be taken if any?

A preliminary site assessments would assist in the determination of the amount and extent of contamination at the above site.

It is our understanding that there are several hundred gallons of liquid currently in each tank. This liquid needs to be removed prior to the tank removal. You are requested to provide copies of waste recycling receipts or manifests of waste disposal to this office.

Chemical sampling beneath underground piping every 20 linear feet are required in order to examine for subsurface contamination. Arrangements for performing this sampling must be made.

Mr. Bacharach/Ms. Morzuk

September 24, 1990

Page 2 of 2

Based upon the findings referred to in the above report you are legally obligated to report any unauthorized release to this department. Section 2652 of Title 23 of the CA Code of Regulations states that within 24 hours of the discovery of the release the release shall be reported to the local agency and the State Office of Emergency Services or the Regional Board. Title 23 further states that within 5 working days of detecting the release, the operator or permittee shall submit to the local agency a full report of the extent of contamination, the proposed method and location of disposal. You are requested to fill out an unauthorized release form (enclosed with this letter).

Please be advised that section 25299.37(a) of Division 20 Chapter 6.7 of the Health and Safety Code states that each owner, operator or other responsible party shall take corrective action in response to an unauthorized release in compliance with this section. Section 25299.37(c) states that the local agency may issue an order to the owner requiring compliance with this section. Section 25298(c)(4) states that no person shall close an underground tank unless he demonstrates to the appropriate agency that the site has been investigated to determine if contamination is present, or if there were past releases, and if so, that appropriate corrective or remedial actions have been taken. If appropriate remediation is not taken this could be considered improper closure of an underground tank making the responsible party liable for a civil penalty of not less than \$500.00 to more than \$5000.00 per each day per violation.

You are requested to respond to the above concerns within 14 days of the receipt of this letter.

Should you have any questions, please contact me at (415) 271-4320.

Sincerely,

*Paul M. Smith*

**Paul M. Smith,  
Hazardous Materials Specialist**

**PMS:**

**cc: Gil Jensen, Alameda County District Attorney, Consumer and  
Environmental Protection Agency  
Lester Feldman, SFBRWQCB  
Robert Buchman, King, Schapiro, Mittleman & Buchman  
Steve Davis, Leasee  
Jonathan Redding, Fitzgerald, Abbot & Beardley  
Files**

**ALAMEDA COUNTY  
HEALTH CARE SERVICES****AGENCY**  
DAVID J. KEARS, Agency Director

JUL 15 1991

SK  
3900 44. 0 2**DEPARTMENT OF ENVIRONMENTAL HEALTH**  
Hazardous Materials Program  
50 Swan Way, Rm. 200  
Oakland, CA 94621  
(415)

July 12, 1991

Mr. John Cummings  
SCS Engineers  
6761 Sierra Court, Suite D  
Dublin, CA 94568**Re: Comments on Modified Work Plan Proposal for 1432  
Harrison St. and Adjoining Alice Street Garage.**

Dear Mr. Cummings:

On March 22, 1991 this office approved your Site Characterization/ Assessment Proposal for 1432 Harrison Street, Oakland CA and the adjoining Alice Street Parking Garage. Due to financial and other considerations expressed by Mr. Leo on behalf of his client a subsequent proposal (outlined in a 5 page letter dated April 26, 1991 from Jonathan Leo to Mark Thomson) was submitted to this office for consideration. Although there were numerous differences in Mr. Leo's letter from that of the original site characterization proposal (as were discussed with Mr. Leo, Mr. Cummings, Mr. Thomson and myself in a telephone conversation on or about May 14, 1991) it was agreed that a "modified work plan" outlining more specific information and containing a closure plan would be submitted to this office for review.

Alameda County Environmental Health, Hazardous Materials Division has received and reviewed the Modified Work Plan For the Removal of Underground Storage Tanks and Installation of Groundwater Monitoring Wells (Modified Work Plan) from SCS Consultants, dated June 5, 1991. The work plan as proposed has several deficiencies which must be addressed prior to the work plan approval. You are requested to submit a revised work plan addressing the following issues:

- 1) This work is to be conducted consistent with the "Tri-Regional Recommendations for Preliminary Evaluation and Investigation of Underground Tank Sites", dated 10 August 1990, (Tri-Regional Recommendations) which is to be incorporated into and made a part of the modified work plan by reference.



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July 12, 1991  
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- 2) During our May 14, 1991 conversation it was established that once the initial soil sampling analysis for all of the Tri-Regional Recommendation listed analytical constituents were tested for, that future analytical constituents sought could be for only those which initially produced detectable concentrations.

This procedure is allowable when collecting and analysing soil samples within the same sampling location and for the same contaminants. However, when analyzing for groundwater constituents and in the soil testing during construction of the monitoring wells you are (as per the Tri-Regional Guidelines) required to analyze for the full complement of contaminants rather than only those which were detected in soil. After several sampling events, if certain substances are not detected, discussion as to future substances sought, after conferring with the RWQCB, can be discussed with this office. Such determination will be based upon the Tri-Regional Recommendations and technical standards.

- 3) Health and Safety Plan:

On July 1, 1991, I received information (see enclosure) that a 13% and a 14% concentration of benzene was found in the liquid/sludge in each of the two gasoline tanks on the Harrison Street side of the site during a prior investigation. This appears to be a higher level of benzene than would normally be expected in gasoline. Existing, as well as this new information, indicates the presence of significantly high levels of chlorinated solvents and PCBs to warrant a more elaborate Health & Safety Plan. Due to this new information we require that your Health and Safety Plan be revised to include additional safety measures to quantify contaminants and protect human health and the environment from exposure from any of the aforementioned constituents.

The revised Health and Safety Plan shall include the following:

Monitoring of the air space in and around the work site including the enclosed garage areas and public sidewalks and streets, for the protection of the garage employees, patrons and the general public. You are required to specify how monitoring will occur, the types of monitoring devices to be employed and the qualifications of the persons conducting the monitoring. This plan include monitoring activities during the tank removal

Mr. John Cummings  
July 12, 1991  
Page 3

and any related work at the site, as well as during the time(s) when any detectable contamination remains on site. State specific quantitative contamination levels which are not acceptable and a Contingency Plan to be implemented in the situations where these maximum levels are exceeded.

- 4) You are required to provide the state certification number of the SCS laboratory in Long Beach. All lab analysis must be conducted by a state certified laboratory and the lab must have certification to conduct each test performed. EPA holding times must be adhered to. You are also required to have the laboratory indicate in their report any unidentified anomalous data indicated in the gas chromatograph print out or by any other means. Also, address the proposed measures which will be employed in analyzing for constituents for which the SCS laboratory does not have proper certification (if applicable).
- 5) When sampling for the presence of chlorinated hydrocarbons you are required to utilize EPA method 8010/8020 or 8240 rather than 8120 which was specified in (Table 2 of page 18) of the Modified Work Plan.
- 6) In our conversation on or about May 14, 1991, regarding the April 26, 1991 letter, it was agreed that all samples would be tested for all contaminants listed at the last paragraph of page 2 of the April 26, 1991 letter. Although we allowed you to take the wash rack sump samples on 5/23/91, a review of the work plan indicates that the wash rack sump samples have not been tested for the 5 priority metals. Accordingly, you are required to sample the wash rack sump, basement drain, and capped pipe in the Alice Street basement for these constituents. (Please also note that the test method you used for the 5/23/91 samples - 8120 - bears no relationship to the contaminants expected to be encountered at this site. You will need to use 8010/8020 or 8240 when these samples are re-taken and analyzed.)
- 7) To clarify the sampling for metals (where applicable), you are required to analyze for the five priority metals (Pb, Ni, Zn, Cr and Cd).
- 8) You are required to collect a sample every 20 lineal feet for all ancillary piping (regardless of whether the piping is removed or not) and

Mr. John Cummings  
July 12, 1991  
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analyze for the presence of the same constituents for which these pipes are connected.

- 9) Regarding the sampling of stock pile excavation tailings, page 20 of the modified work plan states that one sample per stock pile would be collected. The number of samples per stock pile shall be based upon volume of the soil, proposed storage, treatment and/or disposal methods and field conditions. Numbers of stockpile samples are often determined based upon the disposal or treatment requirements of the facility which is accepting the contaminated material. Specify the stock piled material sampling schedule. Stockpiled soil samples are to be composited in the laboratory; field compositing is not acceptable. Stockpiled material is to be covered with visqueen over and underneath of the material.
- 10) Regarding the sampling of the Lift area (discussed on page 18 of the modified work plan), you are required to collect a discrete sample underneath each hydraulic ram, each fluid reservoir and for every 20 feet of piping unless field conditions indicate the need for more or less sampling. Analysis shall be consistent with Table 2 on page 18 of the modified work plan unless site conditions indicate the presence of other contaminants.
- 11) a) On page 33 of the modified work plan you have indicated the sample analysis will be completed within 14 days. This is at variance with the May 14, 1991 agreement that analysis would be completed within 10 days of sampling. However, this change is acceptable. This raw data shall immediately be provided the County with an accompanying map describing the sampling location. The time delay in submitting the above data does not relieve you and/or your clients from their responsibility to insure that there are no health or safety hazards as a result of excavations remaining open or the storage of contaminated stockpiled materials on site.
- b) As discussed at issue 2, limiting the constituents sampling in the soil and ground water would be inconsistent with the Tri-Regional Recommendation. Accordingly, we expect the three groundwater wells to be installed immediately upon tank and piping removal. Sampling of the wells shall occur within seven days of installation. Analysis turn-around shall be 14 days.

Mr. John Cummings  
July 12, 1991  
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Within 10 working dates of analysis, the Phase II workplan "describing and evaluating the data outlined and providing a phase II workplan for further site characterization" (See April 26, 1991 letter from Jonathan Leo to Mark Thomson) shall be submitted to this office. The Phase II report is to include, among other things, a proposal to install additional monitoring wells on and off site as warranted by the results of the Phase I investigation and consistent with the Tri-Regional Recommendations.

- 12) Phase I calls for the installation of three groundwater monitoring wells. Specify the analytes sought in each well and the frequency of ground water elevation measurements and ground water analysis.
- 13) If ground water is encountered in any of the tank excavations you will be required to sample that water per the Tri-Regional Recommendations.
- 14) The County Closure Plan portion of the Modified Work Plan must be dated and executed by both of the property owners.
- 15) It is anticipated that highly contaminated soil and/or free product conditions may be encountered at this site, therefore we require that you develop several contingencies for handling the anticipated contaminants including appropriate soil treatment and/or disposal situations. We also expect plans for the immediate abatement of any health, safety fire or explosion hazard that occurs during site work.
- 16) We wish to make explicit that a condition of any approved work plan will be that a representative from Alameda County Hazardous Materials Division will be present during the underground tank removal(s), first round of sampling, and any subsequent sampling at the above site. Additional sampling may be required at Alameda County's direction as field conditions dictate and according to the Tri-Regional Recommendations as well as any other appropriate guidance documents.
- 17) The work plan does not provide specificity as to the extent of excavation which will occur at each of the sites where tanks, sumps, lines or hoists will be removed. You are required to provide more elaboration as to the extent of the initial excavation which will occur in each area.

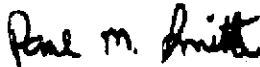
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The tank removal and associated work may provide a valuable and, perhaps, the only opportunity to collect evidence that might show the type of gasoline used, it's age or any other data which could help establish when any leaks occurred. We suggest that if your clients are interested in considering this sort of an investigation they retain expert(s) who are knowledgeable in this area.

Finally, a review of our records indicates that the funds previously submitted for Department of Health oversight for this project are depleted. Please submit to this office a check made payable to the County of Alameda for \$ 1000.00.

If you have any questions regarding the content of this letter please feel free to contact me at 415/271-4320.

sincerely,



Paul M. Smith  
Hazardous Materials Specialist

cc:

Jonathan Leo Esq., Heller, Ehrman, White & McAuliffe  
Mark Borsuk Esq.  
Mr. Alvin Sacharach  
Ms. Barbara Borsuk

**ALAMEDA COUNTY  
HEALTH CARE SERVICES****AGENCY****DAVID J. KEARS, Agency Director**

0390044.02

**DEPARTMENT OF ENVIRONMENTAL HEALTH**  
Hazardous Materials Program  
80 Swan Way, Rm. 200  
Oakland, CA 94621  
(415)

September 3, 1991

**Mr. John Cummings**  
SCS Engineers  
6761 Sierra Court, Suite D  
Dublin, CA 94568**Re: Comments on the Revised Modified Work Plan Proposal for  
1432 Harrison Street and Adjoining Alice Street Garages.**

Dear Mr. CUMMINGS:

**Alameda County Environmental Health Department, Hazardous  
Materials Division has received and reviewed the Modified Work  
plan which you submitted to this office, dated August 19, 1991.****Upon review the work plan is still deficient in the following  
areas:**

- 1) **Health and Safety Plan concerns regarding halogenated  
solvents still need to be addressed. Chlorinated solvents  
were reported in laboratory analysis from SCS collected on  
July 10, 1991 and also from data collected October 19, 1990.  
The Health and Safety plan should address the air monitoring  
procedures utilized to detect the presence of suspect  
chlorinated constituents and the permissible levels of  
each contaminant.**

**You are required to develop and maintain a monitoring log on  
the job site in order to evaluate the presence of all  
suspect airborne contaminants. You are required to specify  
the contaminants sought, frequency of monitoring, the method  
of detection and person(s) conducting the monitoring.****The revised Health and Safety Plan shall include the  
following:****Monitoring of the air space in and around the work site  
including the enclosed garage areas and public sidewalks  
and streets, for the protection of the garage employees,  
patrons and the general public. You are required to  
specify how monitoring will occur, the types of  
monitoring devices to be used (which must be capable of  
detecting all substances that have previously been  
detected at this site) and the qualifications of the  
persons conducting the monitoring.**

Mr. John Cummings  
September 4, 1991  
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This plan must include monitoring activities during the tank removals and any related work at the site, as well as during the time(s) when any detectable contamination remains on site. State specific quantitative contamination levels which are not acceptable and a Contingency Plan to be implemented in the situations where these maximum levels are exceeded.

You are required to specify the interim measures you will take during the interval between start of excavation for the tank removal(s) and the closure of that excavation to ensure proper site security measures are observed, including control of air borne contamination.

- 2) Page 12 of the Revised Work plan states that the project manager is authorized to act as the site safety officer. You are required to specify the name of a project manager who will be on site at all times when work is being conducted on site.

You are required to specify in a Contingency Plan what measures will be taken in the event that levels exceed permissible exposure level (PEL) amounts. Please discuss the operation of the parking garages during the tank removals and associated work and any measures which will be taken if the PELs are exceeded.

- 3) Page 20 of the Revised Work plan states that 2 samples will be collected every 50 cubic yards. Four discrete samples are required per 50 cubic yards, and samples are to be composited in the laboratory. Also, specify where you plan to store stock piled soil.
- 4) Prior experience with hydraulic lift removals in back fill material has shown a tendency for the soil to slough into the former location of the ram which renders sampling difficulties. You are requested to elaborate the method for collecting discrete soil samples from beneath the hydraulic lift rams.
- 5) Page 29 of the Revised Work plan states that soil tailings collected from monitoring well borings will be labelled "Possibly hazardous". You are requested to also label each drum with a sample number identifying the drum with the appropriate sample number(s).
- 6) Please confirm the state certification for SCS laboratories in Long Beach as E755 so that it can be entered in the closure form application.

Mr. John Cummings  
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Page 3

- 7) As specified in the County closure plan the method detection limits do not conform to the Tri-Regional Recommendations. You are required meet the higher detection limits as are required on page 18 of the Tri-Regional Recommendations.
- 8) On page 14 of the Revised Work plan you indicated that the installation of the monitoring wells would characterize the lateral and vertical extent of contamination at the above site. If substantial subsurface contamination exists additional wells will be required to adequately define the extent of contamination beneath the site.

Please be advised that you are obligated to comply with all of the conditions specified in the July 12, 1991 correspondence as well as any previous or future conditions specified by this agency.

Additionally, as specified in the July 12, 1991 correspondence from this office you are required to submit a Phase II Work Proposal within 10 days of the completion of the laboratory analysis from the groundwater monitoring well installation. The Phase II report is to include, among other things, a proposal to install additional monitoring wells on and off site as warranted by the results of the Phase I investigation and consistent with the Tri-Regional Recommendations.

Finally, a review of our records indicates that the funds previously submitted for Alameda County Hazardous Materials Division oversight for this project are depleted. Please submit to this office a check made payable to the County of Alameda for \$ 1000.00.

If you have any questions regarding the content of this letter please feel free to contact me at 415/271-4320.

Sincerely,

*Paul M. Smith*

Paul M. Smith  
Hazardous Materials Specialist

cc:

Jonathan Leo Esq., Heller, Ehrman, White & McAuliffe  
Mark Borsuk Esq.  
Mr. Alvin Bacharach  
Ms. Barbara Borsuk



ALAMEDA COUNTY  
HEALTH CARE SERVICES

AGENCY  
DAVID J. KEARS, Director



RECEIVED OCT 30 1991

Telephone Number: (415)

October 29, 1991

Mr. John Cummings  
SCS Engineers  
6761 Sierra Court  
Suite D  
Dublin, CA 94568

Re: Comments of September 24, 1991 Revision to the Work  
Plan proposal for 1432 Harrison and adjoining Alice  
Street garages, Oakland, CA 94612

Dear Mr. Cummings:

Alameda County Environmental Health Department, Hazardous  
Materials Division has received and reviewed your comments  
responding to the September 3, 1991 letter from this office.

INTRODUCTION:

Our evaluation after reviewing SCSs several submittals is that  
SCS apparently considers this to be just another routine  
underground tank removal. There are several factors which make  
this removal far from routine. These include but are not limited  
to the following:

- 1) The tanks, sumps and hoists and associated ancillary  
piping are all located in confined or relatively  
confined areas with either full or partial enclosure  
within structures.
- 2) Chemicals which have previously been detected in or  
around tanks, pipes or sump are other than those  
typically found in fuel related underground tank sites.
- 3) Both garages are located in urban locations with  
relatively high foot traffic from workers travelling to  
and from adjacent commercial businesses. Air intake  
systems from adjacent structures may collect and  
circulate contaminated air produced from contaminants  
at the above site to heat or cool nearby buildings.
- 4) The garage systems are currently being used to park  
vehicles and it is my understanding that SCS currently  
plans that they will be occupied during the proposed  
removal activities. The intended use of the parking  
facility coupled with knowledge obtained from previous

Mr. John Cummings  
October 29, 1991  
Page 2

sampling intervals raises concerns regarding the possible health and safety which might affect parking patrons, employees and the general public.

**Cal-OSHA:**

After reviewing SCS's September 24, 1991 letter I became concerned about SCS's monitoring proposals in relation to worker and public safety. In particular I was concerned about the issue of proper monitoring to detect the presence of exposures from all of potential chemical detected on site. As a consequence of these concerns I discussed this matter with Cal-OSHA, Oakland Enforcement Office (Jonathan Rossen, Associate Industrial Hygienist). Cal-OSHA agrees that we are justified in requiring airborne monitoring for each hazardous substance that has been reasonably shown to be associated with this site. They also stated that the monitoring instruments(s) used must be able to detect the specific substance to be monitored. They also concurred with us that monitoring for benzene will not adequately detect chlorinated hydrocarbons or PCBs.

**Photo Ionization Detector:**

SCS proposes to use a photo ionization detector (PID) to detect the presence of all contaminants previously found at the site including all petroleum and chlorinated compounds. We believe it can't be done with a PID. A PID normally calibrated to isobutylene, is incapable of giving an indication that the permissive exposure levels (PELs) of chlorinated solvents or benzene have not been exceeded.

It should be noted that the ionization potentials for many halocarbons are greater than 11.0 electron volts (ev) therefore, the standard 10.2 ev bulb used with a PID would not only be non-definitive for the presence of a specific compound but it is likely that it would be unable to detect its presence.

Regarding the issue of providing quantitative and qualitative air quality monitoring information you are required to employ a more definitive monitoring system than the proposed PID. Please specify the type of continuous monitoring system to be used, the frequency of monitoring and the qualifications of the personnel performing the monitoring. You are also required to maintain a monitoring log documenting the chemical monitored, the level obtained, and the frequency of monitoring.

**Known Data:**

To clarify the laboratory results referred to in the September 3, 1991 correspondence from this office, the results referred to were of data received by this office of July 10, 1991 via FAX transmission from SCS. The data were actually collected on

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ATTORNEYS AT LAW

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333 BUSH STREET, SUITE 2580  
SAN FRANCISCO, CALIFORNIA 94104-2899  
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FAX (415) 391-8269

October 14, 1992

VIA MESSENGER

Mark Thomson, Esq.  
Deputy District Attorney  
County of Alameda  
Consumer & Environmental  
Protection Division  
7677 Oakport Street, Suite 400  
Oakland, CA 94621

Re: Request To County Of Alameda To Name Douglas  
Motor Service And Its Partners As Responsible  
Parties As To 1428-1434 Harrison St. and  
1435-1443 Alice St., Oakland, California

Dear Mr. Thomson:

On behalf of Alvin H. Bacharach and Barbara Jean Borsuk, we request that you name Douglas Motor Service and its partners as "responsible parties" with regard to all environmental investigation and remediation work at this property. This request is based on new evidence -- the Douglas depositions -- in which the Douglas partners have dramatically changed their testimony and admitted that their previous sworn testimony before the State Board was false. In their depositions, the Douglas partners admitted that the underground storage tanks leaked during their tenancy, that they knew it, and that the leakage continued for months or even years before they did anything about it.

The Douglas depositions not only provide sufficient evidence to name Douglas in the Order, but compelling evidence that Douglas should be designated as the primary responsible party. First, the Douglas partners admitted that the storage tanks leaked and that they knew it. Second, they admitted that they never monitored or tested the tanks despite knowledge of these requirements. Third, they admitted that they did not tell the owners a number of critical facts. For example, Douglas never sent the owners any of the literature Douglas received on requirements for monitoring, testing, registration and closure of tanks. Similarly, the owners -- and everyone else -- learned for the first time during the depositions that Douglas did not

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replace one tank in 1975, as previously believed, but simply abandoned it. As to the other tank, Douglas admitted knowing that the tank leaked many months before it was replaced.

In short, the Douglas depositions show that Douglas caused or permitted contamination of the property, failed to timely correct it, disregarded State laws on monitoring and testing, and misrepresented the property's true condition to the owners. Worse yet, Douglas did not tell the truth about these matters to the State Board.

The Douglas depositions have fundamentally changed the facts and assumptions upon which the County previously relied in determining responsibility for cleanup. We respectfully request that you now reconsider that issue, in light of the depositions, and designate Douglas as the primary responsible party. After you have considered the information in this letter, we also ask you to advise us of the approximate date we can expect the County's decision in this matter. Beyond that, it is up to you and the State Board to decide whether Douglas' false statements to the Board constitute perjury or other actionable misconduct.

Procedural History

On July 31, 1990, the Alameda County Health Care Services Agency issued a Notice of Violation to the owners. On September 24, 1990 the County issued a Cleanup Order to the owners. At a meeting on January 14, 1991, the owners requested that the County name Douglas as a responsible party. Douglas had leased the garage, operated the gasoline facilities, retained all the gasoline revenues, and subleased space to various auto repair shops for a period of 16 years (1972-1988).

The County, nevertheless, refused to name Douglas, and the owners petitioned to the State Water Resources Control Board on February 7, 1991, pursuant to Health & Safety Code Section 25299.37(d). After extensive briefings and a hearing involving the County, the owners, and Douglas, the Board issued Order No. WQ 91-07 on June 20, 1991. The Board's Order concluded:

Petitioner's contention that Douglas  
ought to be added to the County's order

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appears to have merit. If the County has substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them, the County should add Douglas to its order. (Order, p. 4; Ref. #1; see footnote on p.4, infra.)

This letter presents the evidence necessary for the County to add Douglas to the Order and to designate Douglas as the primary responsible party.

There Is Incontrovertible Evidence That The  
Underground Gasoline Tanks Leaked During  
The Time Douglas Operated Them

1. Douglas Misrepresented The Facts To The Board. One Tank Definitely Leaked, And Douglas Knew It

In his Declaration to the State Board, Lee Douglas stated:

To the best of my recollection, at no time during Douglas' tenure on the property did inventory control procedures, which consisted of comparisons of tank stick readings, meter readings and sales figures, indicate that gasoline was being lost from any tank. (Decl., March 25, 1991, ¶ 11, p. 3; Ref. #2; see footnote on p.4.)

In his deposition, when asked whether gasoline was leaking from the tanks, Mr. Douglas stated: "One we knew was leaking gas." (Lee Douglas Depo., p. 313:6; emphasis

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added; Ref. #3.)\* Lee Douglas thus directly contradicted the sworn testimony in Paragraph 11 of his Declaration. Both Lee Douglas and Ron Douglas testified that they were alerted to loss of product from this tank by their bookkeeper, Dorothy Vukas, who pointed out that they were buying more gasoline than they were selling. (R.D., pp. 195:9-15, 200:23-201:2, 203:13-21; L.D., p. 201:9-23; Ref. #4.) Ron Douglas testified that the Douglas partners discovered the loss of product about "eight to ten months" before the tank was replaced in late 1982. (R.D., pp. 199:3-18, 492:18-25; Ref. #5.) Despite the leakage, Douglas continued using the tank until it was replaced.  
Id.

This tank, referred to as "tank 2," was the same tank investigated by Robert Miller Company, at Douglas' request, in April and May, 1982. Miller Co. conducted an air test of the tank, which demonstrated that the tank leaked. Phil Musser was President of Miller Co. at the time, and his Affidavit to the State Board recites in detail his investigation of the tank, discovery of leaks, and discussions with the Douglas brothers about them. In their depositions, the Douglas brothers "could not recall" these discussions with Musser, but Ron Douglas recalled that someone had "checked" the tank. (R.D., pp. 214:8-216:22; L.D., p. 211:3-18; Ref. #6.)

Both Douglas partners admitted that tank 2 was leaking and that Douglas knew it months before the tank was replaced. (R.D., pp. 194:6-20; L.D., p. 200:3-22; Ref. #7.) Ron Douglas later saw a hole in the tank the size of a "Kennedy half dollar" when the tank was removed. (R.D., pp. 255:6-22; 257:7-17; Ref. #8.) Neither of the Douglas partners could explain the delay between May, 1982, when Miller Company discovered the leaks, and October 1982, when

---

\* The Douglas depositions will hereafter be referred to as "R.D." for Ron Douglas and "L.D." for Lee Douglas. Excerpts from the depositions, exhibits, and other documents, such as the Douglas Declaration and State Board Order, are attached and referred to in this letter by reference numbers ("Ref. #"). We will provide you complete copies of the depositions, exhibits and videotapes of the depositions upon request.

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Douglas finally had the tank replaced. (R.D., p. 217:9-25; L.D., p. 215:17-25; Ref. #9.)

As noted earlier, the Douglas partners not only admitted that this tank leaked gasoline, but also admitted that their sworn statements to the State Board were false. When asked whether the statements in Paragraph 11 of his Declaration (denying that any leaks had occurred) were true, Lee Douglas testified:

Q. Let's take a look at Paragraph 11 [of the Declaration], if you would, please. Okay?

A. Yes.

Q. Is that true?

A. No.

Q. Pardon me?

A. No.

(L.D., p. 321:4-11; Ref. #10.)

As this testimony indicates, the Douglas partners knew the tank was leaking when they told the State Board it was not leaking.

Douglas did not tell the owners the whole story either. Ron Douglas testified that, after replacing tank 2 in 1982, Douglas told the owners they ". . . were satisfied that the installation of the tank was satisfactory and met all the codes necessary to complete the job and meet the requirements." (R.D., pp. 290:22-291:5; Ref. #11.) Douglas never told the owners there was any soil contamination or that any further action was required after the tank was replaced. (R.D., p. 291:2-5; L.D., pp. 241:23-242:4; Ref. #12.)

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2. Douglas Also Misrepresented The Facts As To The Second Gas Tank. It Was Not Replaced In 1975, But Abandoned

In Lee Douglas' Declaration to the State Board, he stated that "water was showing up" in one of the gasoline tanks, and that the tank was replaced at Douglas' expense in 1975. (Decl., ¶ 7-8, pp. 2-3; Ref. #13.) This statement, too, was false. In his deposition, Lee Douglas stated that he did not know whether a tank had been replaced in 1975. (L.D., p. 138:9-12; Ref. #14.) His brother, Ron, was adamant that this particular tank, "tank 1," was never replaced. (R.D., pp. 96:3-9, 100:22-101:8, 350:4-10; Ref. #15.) Ron Douglas testified that, after water in the tank proved to be a continuing problem, the Douglas partners decided to simply shut the tank down. (R.D., pp. 90:8-91:19, 93:6-11; L.D., pp. 119:20-120:17; Ref. #16.) It remained shut down until the end of Douglas' lease. (R.D., pp. 387:19-388:3; L.D., pp. 303:17-304:17; Ref. #17.)

It was unclear from Douglas' testimony when the "water problem" in tank 1 was first discovered, but Ron Douglas admitted that there was some discussion of it as early as 1975. (R.D., pp. 103:11-105:21; Ref. #18.) In any event, Douglas continued operating tank 1 until late 1982, when tank 2 was replaced. (R.D., pp. 493:1-494:4; Ref. #19.) Both tank 1 and 2 were originally 550-gallon tanks and Douglas kept operating tank 1, despite the water problem, until tank 2 was replaced with a 1,000-gallon tank. Only when Douglas obtained this additional capacity, did they finally shut down tank 1. (R.D., pp. 99:12-100:16, 141:3-9, 348:15-349:1; Ref. #20.)

The net result is that Douglas continued to operate tank 1 for as long as seven years after the water infiltration problem became known. Water in the gasoline, in fact, caused damage to several of the Douglas customers' cars. (R.D., pp. 91:12-93:5, 95:1-96:16; Ref. #21.) While the Douglas partners, in their depositions, maintained that water was only leaking into this tank, Ron Douglas finally admitted that, "If water comes in, we are assuming that gas went out." (R.D., pp. 448:22-449:16; Ref. #22.)

The Douglas partners thus knew for certain that gasoline was leaking from tank 2 before it was replaced, and they



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knew or had good reason to know that gasoline was leaking out of tank 1 at the same time water was leaking in.

3. Douglas Also Misrepresented The Facts Regarding Their "Inventory Reconciliation" Procedures. Douglas Had No Procedures Which Qualified As "Inventory Reconciliation" Under State Law

Lee Douglas' Declaration stated that "inventory control" procedures indicated no product loss "from any tank" during Douglas' tenancy. (Decl., supra, ¶ 11, p. 3; Ref. #2.) This statement was not only untrue as regards product loss, but also untrue in suggesting that Douglas had "inventory control procedures" worthy of the name. The "tank stick readings" referred to by Douglas were performed on the average of once a week, and none of these dipstick readings was ever recorded. (R.D., pp. 80:16-82:10; L.D., pp. 44:14-24; Ref. #23.) Gas sales and pump meter readings were recorded on "gas sheets," which were used to bill monthly customers. Douglas' bookkeeper, Dorothy Vukas, would then periodically compare the pump meter readings with the invoices for gasoline purchased. (R.D., pp. 87:14-25; L.D., pp. 52:14-53:15; Ref. #24.)

These procedures in no way complied with the requirements for "inventory reconciliation" in the California Code of Regulations, and the Douglas partners so admitted. (R.D., p. 423:11-17; L.D., pp. 317:3-318:16; Ref. #25.) See, e.g., Health & Safety Code §§ 25292, 25293; 23 CCR § 2646. As Ron Douglas put it, they continued to use "the same procedure they had for 50 years." (R.D., p. 309:3-17; Ref. #26.) The fact that a leak was discovered at all using these crude methods -- comparison of vendor invoices and meter readings -- suggests that the product loss from tank 2 must have been substantial. No one knows how much gasoline escaped, or for how many years, before the leak became large enough to be detected in this manner.

The Douglas depositions also demonstrated Douglas' indifference to the requirements for tank integrity testing. See, e.g., Health & Safety Code § 25292; 23 CCR § 2645. The Douglas partners acknowledged that they were aware of the requirements for testing, but they never performed it on the new tank installed in 1982 or on the old tank left in place. (R.D., p. 346:2-13; Ref. #27.) At

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the time Douglas vacated the premises in April, 1988, neither of the tanks had been tested in accordance with State Regulations.

Douglas' failure to monitor and test the underground storage tanks cannot be explained by ignorance of the law. To the contrary, both of the Douglas partners testified that they received voluminous information from State agencies, private consultants and oil companies concerning the new underground storage tank laws and regulations.

(R.D., pp. 344:11-346:24; L.D., pp. 169:18-171:24, 245:1-246:4; Ref. #28.) For example, they received numerous brochures from environmental consultants advising them of the requirements for tank integrity testing and monitoring and the time period when the new regulations went into effect. (R.D., pp. 65:24-66:21; L.D., pp. 249:16-250:22; Ref. #29.) At the time they received this information, Douglas operated at least four parking garages where they sold gasoline. (R.D., pp. 49:14-55:23; Ref. #30.)

Douglas has, in fact, long been one of the largest parking companies in the East Bay, and when it came to gasoline sales, they knew far more than the owners, who had never operated the garage or gasoline pumps and who received none of the revenues from Douglas' gasoline sales. These revenues were Douglas' alone, and Douglas had insisted that these gasoline revenues be excluded from the rental computation when the lease was first negotiated in 1972. (See 1972 Lease, Addendum, ¶ 29; 1974 and 1981 Leases, Addenda ¶ 28; see also, R.D., pp. 109:20-117:6; Ref. #31.) In an October 28, 1975 letter to Sanford Douglas, Mr. Bacharach noted that, ". . . you specifically wanted the revenue for the sales of gasoline not to be included in your gross sales figure . . ." for determining the rent. (Exh. 14; L.D. 168:11-18; Ref. #32.)

Despite the abundance of information Douglas received about the new regulations for underground tanks, they did not comply with monitoring and testing requirements at Harrison Street or at any of their other facilities, including the main garage they owned at 1721 Webster Street. (R.D., pp. 65:24-66:1, 394:18-24, 401:3-16; Ref. #33.) And, contrary to their statements to the State Board, Ron and Lee Douglas admitted in their depositions that they knew there was no "exemption" from the tank monitoring and testing requirements based on "low throughput." The only

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"exemption" was from vapor recovery requirements of BAAQMD. (R.D., p. 483:3-8; L.D., 37:4-19; Ref. #34.)

Finally, none of the literature Douglas received about underground storage tanks, whether from the State, consultants or other sources, was ever sent to Mr. Bacharach and Ms. Borsuk. (R.D., pp. 354:17-355:14; L.D., p. 171:3-24; Ref. #35.) The result is that Douglas failed to perform tank monitoring and testing with full knowledge of the regulations on these matters, while the owners never received any of this critical information. Douglas, not the owners, should therefore bear primary responsibility for the leakage which occurred.

4. The Douglas Depositions Also Demonstrate That Douglas Is Responsible For Contamination Which Occurred Elsewhere In The Garage During Its Tenancy

Douglas represented to its customers that it offered "complete auto service facilities on the premises." (L.D., pp. 144:22-146:22; Exh. 4; Ref. #36.) Similarly, Douglas advertised that it provided "complete systematized automotive repair," including batteries, carburetor and electrical experts, wheel aligning, brake service and body work. (R.D., pp. 147:5-148:9, Exh. 58; Ref. #37.) And, indeed, Douglas' subleases indicate that Douglas did offer such services.

For example, Roy's Auto Body performed repairing of automobiles "from bumper to bumper" at Harrison Street, according to Ron Douglas. (R.D., pp. 153:25-154:6; Ref. #38.) Similarly, Douglas had a sublease with a mechanic named Thompson for "repairing and servicing" of automobiles in a 1,000-square-foot area on the main floor, ". . . including a wash stall, hydraulic hoist stall and all utilities, fixtures and appliances therein." (R.D., pp. 176:13-178:25; Exh. 66; emphasis added; Ref. #39.) At the same time, Sanford Douglas wrote the owners and requested permission for a one-year sublease with Thompson, stating:

The mechanic who has been doing repair work for the last several months has asked us for a one-year sublease with a one-year option at the same rental as presently exists, in

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order that he may have some security. His interest is to be able to purchase some new equipment.

He is a good man and I would like to be able to keep him.

He occupies the lubrication rack and the spaces of four cars adjoining. (R.D., pp. 162:21-163:20; Exh. 61; Ref. #40; emphasis added.)

In addition to this evidence of auto servicing and repairs, Douglas had other subleases which provided for servicing of cars on the premises. For example, Douglas had a sublease with American International Rent-A-Car which provided that American would sublet space for "Automobile Rental Storage and Repai[r] of Lessee's own Vehicles." (Sublease, ¶ 6.1, Exh. 63; Exh. 62; R.D. 169:5-23; Ref. #41.) American subleased "a portion of the main floor, including offices and automobile work areas. . . ." (R.D., pp. 167:10-168:10; Ref. #42; emphasis added.) Douglas, in fact, had two subleases with American, which occupied the premises for several years. Id.

Despite all this evidence regarding servicing and repairs, the Douglas partners in their depositions denied that any work, other than auto body work, had taken place at Harrison Street. (R.D., p. 162:2-21; L.D., pp. 85:9-86:25; Ref. #43.) With regard to Douglas' own advertisement of "complete auto service facilities on premises," Ron Douglas' response was, "That doesn't mean anything. If anything came in, I would take them over to D.M.S." [Douglas' operation on Webster Street]. (R.D., p. 145:16-23; Ref. #44.) In other words, according to Ron Douglas, they represented to customers that they were performing services on site, but then took the customers' cars elsewhere. (R.D., p. 148:18-25; Ref. #45.)

With regard to Sanford Douglas' letter about the mechanic who "occupies the lubrication rack," Ron Douglas flatly denied that any such person worked there. Ron Douglas, who now knows there is an underground tank associated with the lubrication rack, even went so far as to suggest that his father had been lying when he wrote to the owners about this mechanic. In the end, however, Ron Douglas could not

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come up with any explanation as to why his father would say a mechanic had been performing repairs and occupying the lube rack if that were not true. (R.D., pp. 164:23-166:14; Ref. #46.) Since the depositions, additional evidence about this mechanic has turned up in the 1974 Yellow Pages, which advertised "Tom Thompson, Mechanic" and "Fuel Injection Specialist" for "Tune-ups & Repairs" at the 1432 Harrison Street Garage. (Ref. #47.)

With regard to the American International Rent-A-Car sublease, Ron Douglas and Lee Douglas said that American "neglected" the cars and never changed the oil or performed lubrication, but simply did "minor stuff," such as windshield wiper blades and light bulbs. (R.D., pp. 157:21-160:11, 172:1-12, 174:2-175:7; Ref. #48.)

The Douglas partners thus denied that any auto servicing or repairs took place at Harrison Street, other than the body shop, and they denied any use of the hydraulic lift or waste oil tanks. (R.D., pp. 174:20-175:7; Ref. #49.) This testimony is simply not credible. It is contradicted by numerous subleases, letters and advertisements, which refer to auto repairs by various Douglas subtenants. For example, the "mechanic who has been doing repair work for the last several months," and "who occupies the lubrication rack" must have used the hydraulic hoist. Similarly, as to the waste oil tanks in the basement, the Douglas partners denied any knowledge of them, but Ron Douglas admitted that he noted a "barrel of waste oil" on the property sometime after the Douglas lease commenced in 1972. (R.D., pp. 69:24-70:20; Ref. #50.)

In short, despite the Douglas partners' denials, their depositions strongly indicate that Douglas' subtenants performed auto repairs and servicing on the premises and used the hydraulic hoist and waste oil tanks. Douglas is therefore responsible not only for contamination associated with the gasoline tanks, but also for any contamination arising out of auto servicing during Douglas' 16-year tenancy.

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Legal Analysis

The Board has already stated that Douglas should be added to the County's Order if there is "substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them. . . ." (Bacharach (1991) Order No. WQ 91-07; Ref. #1 .) The evidence presented here clearly meets this standard.

Furthermore, the Board indicated that one party may be placed in a position of secondary responsibility:

In many cases we deemed it reasonable to place one party in a position of secondary responsibility. (See, e.g., Order No. WQ 87-6, Prudential Insurance Company of America.) We find no basis for suggesting that the County do that in this case. (Bacharach (1991) Order No. WQ 91-07.)

At the time of the Board's Order, the Board did not have the benefit of the Douglas depositions, which now provide a very sound basis for determining primary and secondary responsibility. The facts established in the Douglas depositions show that Douglas should be designated as the primary responsible party, and the owners as secondary parties who will be obligated to conduct the cleanup only if Douglas fails to do so.

The State Board has made clear in several decisions that primary responsibility may be assigned where the facts justify it. For example, in Prudential, supra, petitioner was the landowner and leased the site to Fairchild Semiconductor and Micro Power, which agreed to conduct a cleanup in response to the Regional Board's Order naming the lessees and the owner. Prudential requested that the Order be modified to make clear that it would be obligated to perform the cleanup only if the lessees defaulted. Prudential Insurance Company of America (1987) Order No. 87-6. The State Board agreed, noting that Regional Boards can set a "different standard of performance" for lessees and landowners where the facts warrant it. Id.

Similarly, in Vallco Park, Ltd. (1986) Order No. WQ 86-18, the petitioner owned industrial land and leased portions of

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it to two semiconductor manufacturers. The Regional Board issued waste discharge requirements to the lessees and the landowner, who petitioned to have his name removed from the Order. The State Board rejected this request, but agreed that the lessees should be designated as the primary responsible parties. The State Board concluded that, ". . . the Regional Board should continue to look to the lessees regarding cleanup and only involve the landowner if the lessees fail to comply with the orders." Vallco Park, Ltd. (1986) Order No. WQ 86-18.

Likewise, in Schmidl (1989) Order No. WQ 89-1, the Regional Board issued a cleanup and abatement order naming Bowles Flying Service, a pesticide sprayer, as the primary responsible party and the Schmidls, the landowners, as secondary parties. The landowners protested that they should not be named at all, but the State Board concluded the Order was proper:

The initial responsibility for cleanup is with the operator, but according to Vallco, it is appropriate to look to the owner to assure cleanup in the event the operator fails in its obligations. See also, Stinnis-Western Chemical Corp. (1986) Order No. WQ 86-16; J.N.J. Sales and Services, Inc. (1988) Order No. WQ 88-8. Similarly, the Board has found it appropriate to name landowners as responsible parties -- subject to the lessee/discharger's primary duty -- to comply with waste discharge requirements. Southern California Edison Co. (1986) Order No. WQ 86-11; U.S. Forest Service (1987) Order No. WQ 87-5. (Schmidl, supra; see also Arthur Spitzer (1989) Order No. WQ 89-8.)

These rules apply with equal force in the present case. Here, the facts demonstrate that Douglas permitted the discharge, knew about it, and most recently, lied about it. There can be no doubt about Douglas' responsibility, and there is no reason Douglas cannot undertake the cleanup. While Douglas is no longer the lessee at Harrison Street,

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Douglas continues to operate parking garages and lots throughout Oakland, and Douglas' main office at 1721 Webster Street is only a few blocks away. Douglas can easily take over the cleanup, and now is an ideal time for Douglas to do so, since the next phase of work, tank removal, is about to begin.

Under the State Board's decisions, the County should therefore designate Douglas as the primary responsible party and the owners as secondary parties who will be obligated to perform the cleanup if Douglas fails to do so.

#### Conclusion

The Douglas partners have finally come clean and admitted that the underground gasoline tanks leaked while they operated them. This is precisely the evidence the State Board said is sufficient to name Douglas as a responsible party. The evidence, however, goes far beyond that. Douglas' testimony not only confirmed that the tanks leaked, but that the Douglas partners knew it and did nothing about it for months or even years.

Later, when the underground storage tank laws and regulations came into effect, they ignored the monitoring and testing requirements and continued to do business "as usual." Meanwhile, their subtenants continued to perform a variety of mechanical repairs and servicing of automobiles, which the Douglas partners denied, but which undoubtedly contributed to the contamination in the garage.

Finally, and perhaps most important, the Douglas partners admitted that they did not tell the State Board the truth. This admission not only raises the question of perjury, but fundamentally changes the facts and assumptions upon which the County's previous determination of responsibility was based.

In these circumstances, the County should reevaluate the issue of responsibility and designate Douglas as the primary responsible party. In so doing, the County will ensure that the party who caused the contamination pays for

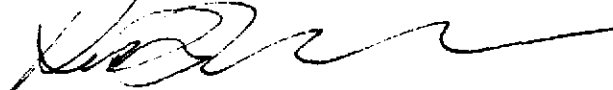


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it and that irresponsible business practices are discouraged, not rewarded.

Very truly yours,



Randall D. Morrison

RDM/kh

cc w/Enclosure:

The Honorable Joseph J. Carson, via messenger  
William J. Trinkle, via messenger  
Charles M. Riffle, by regular mail  
Donald F. Drummond, by regular mail  
Elizabeth A. England, by regular mail

***REFERENCES FOR***  
***OCTOBER 14, 1992 LETTER TO***  
***MARK THOMSON***

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
ALVIN BACHARACH AND BARBARA BORSUK )  
For Review of Alameda County Cleanup )  
Order Issued on January 14, 1991. )  
Our File No. A-728. )

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ORDER NO. WQ 91-07

BY THE BOARD:

The Alameda County Health Care Services Agency (County) has taken responsibility for supervising the cleanup of certain leaking underground tank sites within its jurisdiction. On July 31, 1990, the County issued a notice of violation to Alvin Bacharach and Barbara Borsuk (Petitioners) concerning a piece of property in Oakland which they have owned since about 1945. The site, located at 1432 Harrison Street, had served as a parking garage for several decades. It was leased to various operators over the years including Douglas Motor Services (Douglas) which occupied the site from 1972 through 1988. Petitioners asked the County to amend the notice of violation, as well as subsequent requirements for site assessment and cleanup, to include Douglas as a responsible party. On January 14, 1991, the County refused to do so. This petition followed on February 7, 1991.

I. STATE BOARD JURISDICTION

In 1989 the Legislature added several new sections to the underground tank law. Chapter 6.75--Petroleum Underground

Storage Tank Cleanup--was added to give local government more flexibility in ordering dischargers to clean up spilled gasoline and other petroleum products. Under earlier law, counties could only go to court for injunctions and penalties and had little more than the threat of doing so to compel cooperation. Chapter 6.75 placed local government on a par with a Regional Water Quality Control Board (Regional Board) in many ways. Among other things, local agencies "may issue an order to the owner, operator, or other responsible party requiring compliance" with the cleanup sections of the statute. (Health and Safety Code Section 25299.37(c).) The State Water Resources Control Board (State Board) is required to adopt regulations which implement Chapter 6.75. Those regulations may clarify the remedies available to local agencies. Until the State Board adopts those regulations, a local agency order must still be enforced using the normal judicial sanctions.

When a local agency issues an order under that section, the person to whom it is directed may petition the State Board in precisely the same manner as if it were a cleanup and abatement order issued by a Regional Board. (Health and Safety Code Section 25299.37(d).) From the language as well as the context of that section, it seems clear the Legislature intended to give a local agency the power to issue what amounts to a cleanup and abatement order in this limited context. We will review the County's order as if it were a cleanup and abatement order issued by a Regional Board.

## II. CONTENTION AND FINDING

1. Contention: Petitioner raises only one point in its brief to the State Board. Petitioner contends that the County erred in refusing to add the name of Douglas Motor Services to the order to investigate subsurface contamination of the parking garage. Petitioner has dropped the argument it made to the County that only Douglas should be named in the order.

Finding: Petitioner's claim that Douglas ought to be added to the order has merit. While a landowner generally should be named whenever he or she knew of and allowed the activity which caused the problem, it would be unfair to place all of the responsibility on the landowner. The Water Code provides for the issuance of cleanup and abatement orders to "dischargers." Orders issued pursuant to the Health and Safety Code section under which the County is proceeding are equivalent to cleanup and abatement orders under Section 13304 of the Water Code. Thus, equating "dischargers" with "operators" or "other responsible parties" in this order is proper. Lessees have often been named as responsible parties under Section 13304. (See e.g. Order No. WQ 89-8, Arthur Spitzer et al., Order No. WQ 85-15, Stuart Petroleum.)

Several factors support a conclusion that Douglas ought to be named in this order. Douglas operated a parking garage on the site for about 16 years. During that time, he pumped gas from two underground tanks. His business benefited from his ability to provide gasoline to his customers. Over time, he

replaced both of those tanks largely at his own expense (though not without efforts to have Petitioners share in the cost.) The record contains some evidence that Douglas may have known in 1982 that the tanks were leaking. The extent of the migration of the gasoline, as mapped in the Subsurface Consultants report, is consistent with an assumption that leaks have existed for some time.

The record before the State Board is far from complete and, from it, we cannot be certain that leaks at the garage occurred during its operation by Douglas. However, if the County has substantial evidence which shows that Douglas was in control of the property and using the tanks while leaks were taking place, even if Douglas was not actually aware of the leaks, the County should consider Douglas a "responsible party" and, under these circumstances, name him in its order.

In many cases we have deemed it reasonable to place one party in a position of secondary responsibility. (See e.g. Order No. WQ 87-6, Prudential Insurance Company of America.) We find no basis for suggesting that the County do that in this case.

### III. CONCLUSION

Petitioner's contention that Douglas ought to be added to the County's order appears to have merit. If the County has substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them, the County should add Douglas to its order.

IV. ORDER

IT IS HEREBY ORDERED that this matter is remanded to the County for action consistent with this order.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 20, 1991.

AYE:           W. Don Maughan  
                  Eliseo M. Samaniego  
                  John Caffrey

NO:             None

ABSENT:        Edwin H. Finster

ABSTAIN:       None

  
Maureen Marché  
Administrative Assistant to the Board

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Attorneys for Respondent

BEFORE THE CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

PETITION FOR REVIEW OF FAILURE )	No.:
TO ACT BY THE COUNTY OF ALAMEDA )	
HEALTH CARE SERVICES AGENCY RE: )	DECLARATION OF LELAND
CORRECTIVE ACTION ORDER FOR )	DOUGLAS
HARRISON STREET GARAGE, 1432 )	
HARRISON STREET, OAKLAND, )	
CALIFORNIA 94612 )	

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I, LELAND DOUGLAS, declare that:

1. I am a general partner in Douglas Motor Services and I have personal knowledge of the matters stated herein and could competently testify thereto if called on do so at trial.

2. In 1972, Douglas purchased the parking business in existence on the subject property from Carl Don Skjolander. The terms of the sale called for the purchase of the business (good will, receivables and some inventory) only. It was understood that all improvements on the premises were owned by the petitioners in this matter, ALVIN BACHARACH AND BARBARA BORSUK (hereinafter referred to as "Petitioners").

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3. Concurrent with the purchase of the business, Douglas entered into a lease for the property with the Petitioners. Two additional leases extending Douglas's leasehold interest to March 31, 1988 were subsequently executed (Copies of the leases are attached to Petitioner's Petition as Exhibits "A", "B" and "C").

4. The leases contain provision regarding Douglas's responsibility for "leakage". No discussion whatsoever concerning the meaning of this term took place; it was assumed by Douglas that this referred to damage due to problems with the sewage system, the water pipes and the sprinkler system on the premises.

5. The only environmental issue that was discussed was that concerning the possibility that vehicular access to the garage would be curtailed by governmental action to address air pollution problems. Paragraph 35 of the first lease (Exhibit "A") and Paragraph 34 of the second lease (Exhibit "B") was the result of these concerns. No discussion at all of the underground tanks took place.

6. From 1972 through 1988, Douglas operated a parking garage on the premises. As a convenience to customers of the garage, gasoline was made available. The amount of gasoline pumped was extremely small, averaging 1,000 gallons per month over the term of the leases.

7. In 1975, it appears that Douglas replaced one of Petitioners' 550 gallon underground storage tanks. Because the tank to be replaced belonged to Petitioners, Douglas requested that Petitioners participate financially in the cost of its replacement. Petitioners refused. Apparently, Douglas thereupon replaced the tank at Douglas's expense.

8. Prior to the replacement of the second 550 gallon tank in 1982, we had numerous discussions with Petitioners regarding the fact that water was showing up in the gasoline in that tank as indicated by the water-detecting "paste" on the stick used to measure product level in the tank. We asked Petitioners what they were going to do about it and they said "nothing". We then asked if Petitioners would contribute to the cost of replacing their tank this time; Petitioners finally agreed to contribute about 20% of the cost.

9. When the law required that permits be obtained by the owners of underground storage tanks for their use, Douglas permitted the tanks to assure compliance with the law.

10. Shortly after the laws regarding tanks were enacted, we discussed the requirements for the tanks on the Harrison Street property with local officials and were told that, because of the extremely low throughput, it would not be necessary to conduct yearly tank integrity testing so long as no inventory reconciliation discrepancies appeared.

11. To the best of my recollection, at no time during Douglas's tenure on the property did inventory control procedures, which consisted of comparisons of tank stick readings, meter readings and sales figures, indicate that gasoline was being lost from any tank.

12. In 1988, when Douglas's lease was not renewed, Douglas voluntarily vacated the property leaving the two tanks in place. There was never any discussion as to whether another tenant was going to use the tanks. There was never any reference to their being abandoned. Petitioners never demanded removal of the tanks.

I, LELAND DOUGLAS, am a general partner in Douglas Motor Services and have been authorized to execute this verification on its behalf. I declare under penalty of perjury under the laws of the State of California that the matters stated in this declaration are true and correct and that this declaration was executed on March 25, 1991, at Oakland California.

Dated: March 25, 1991

By: 

Leland Douglas

1 him in 1990?

2 A. If you'd stopped earlier, I could have  
3 answered your question, but then -- you see, there  
4 was two tanks.

5 Q. Okay.

6 A. One we knew was leaking gas.

7 Q. Right.

8 A. And we corrected it.

9 Q. Right.

10 A. The other one I did not know was leaking  
11 gas.

12 Q. Okay. My question is:

13 In your April 1990 conversation with Mr. Davis,  
14 did you tell him that you knew that there was one  
15 tank leaking at some point in time?

16 MR. TRINKLE: Leaking what?

17 MR. DRUMMOND: Gas.

18 A. I would not have told him that, because I  
19 didn't know that. I know that we stopped using it  
20 because it leaked.

21 MR. DRUMMOND: Fair enough.

22 Q. Did you tell Mr. Davis that you stopped  
23 using one of the tanks because it leaked gasoline?

24 A. Well, I don't think I told him that. I  
25 think I said "It leaks." I don't think we defined

1 talk to Mr. Bacharach about replacing it as far as  
2 his contribution. I don't know. It was losing  
3 gas.

4 Q. You were still on the property at the  
5 time?

6 A. Yes.

7 Q. As the manager?

8 A. Right.

9 Q. Lee testified the other day that the  
10 bookkeeper, Dorothy, noticed discrepancies in the  
11 inventory and that that led to or at least led in  
12 part to the decision to replace the tank. Is that  
13 consistent with your recollection of how this  
14 discovery came about?

15 A. Yes.

16 Q. Did you notice any discrepancies or any  
17 loss of product based on your own observations, for  
18 example, the dipsticking in the tank or review of  
19 the meter records?

20 A. It is very complicated because it is  
21 not -- I can't explain it, but it only leaked -- it  
22 would only leak occasionally. Excuse me. The gas  
23 would only -- I am not saying leak. I don't know  
24 how the gas -- whether leaked or not. It would  
25 only leak -- excuse me. It would only lose gas at

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1 gasoline loss?

2 A. Yes.

3 Q. If there was a defect, it was between 450  
4 and 550 in the tank?

5 A. Right. Where was the defect, I don't  
6 know.

7 Q. Did you conclude it was in the tank?

8 A. No, I didn't conclude that at all. I  
9 didn't know.

10 Q. Just thinking this through, if it was in  
11 the lines, it wouldn't make any difference how much  
12 was in the tank?

13 MR. TRINKLE: I object. You are asking the  
14 witness to speculate.

15 MR. MORRISON: I am asking him about his  
16 thought process.

17 Q. You said you considered whether or not  
18 the leak was in the lines; right?

19 A. Yes. You are correct, it would have to  
20 be -- if it was a leak in the lines, it would have  
21 to be all the time. If it was a leak in the tank,  
22 it would only have to be at the top.

23 Q. I realize you hadn't dug up the tank.  
24 Was it your belief before the tank was replaced  
25 that there was a leak somewhere between the 450 and

200

1 550 level in the tank?  
2 A. Yes.  
3 Q. Did you discuss that supposition with  
4 your partners?  
5 A. Yes.  
6 Q. Or that suspicion?  
7 A. Yes.  
8 MR. TRINKLE: Let's take a brief break right  
9 here for about five minutes and come back.  
10 MR. MORRISON: All right.  
11 (Recess taken from 2:55 to 3:02)  
12 MR. MORRISON: Back on the record.  
13 Q. Did your bookkeeper, Dorothy, discuss  
14 with you any opinions she had about the quantities  
15 of gasoline leaking from the tank?  
16 A. No.  
17 Q. Did you and your partners ever make any  
18 estimates of the quantity of gasoline that was  
19 leaking from the tank?  
20 A. No.  
21 Q. You mentioned a little while ago 20  
22 gallons or so. I am not trying to hold you to that  
23 number.  
24 A. Can't hold me to that. That is strictly  
25 a guess.

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1           A.    I had no firsthand information at all.  
2           Q.    Hadn't somebody told you before the tank  
3 was replaced?  
4           A.    There was some gas disappearing.  I never  
5 knew the amount.  I didn't know when it was  
6 happening.  I knew nothing about the gas at all,  
7 the gas disappearing.  
8           Q.    You are still the on-site manager in 1981  
9 and --  
10          A.    Yes.  
11          Q.    -- in 1982 as well?  
12          A.    1982, correct.  
13          Q.    Your understanding is Dorothy tells one  
14 of your partners that there is a problem with  
15 gasoline disappearing from this particular tank?  
16          A.    Right.  
17          Q.    Who tells you about it?  
18          A.    Well, they wouldn't necessarily have to  
19 tell me.  Lee may have mentioned it to me, but Lee  
20 had mentioned that there was gas -- had been some  
21 lost product of gas.  
22          Q.    This is before the tank is replaced that  
23 he mentioned that to you?  
24          A.    Right.  
25          Q.    Did you have any understanding at all as

203



1           A.    Right.

2           Q.    In the 1982 time frame, were you

3 selling -- were there different kinds of product in

4 each of the two tanks?

5           A.    Yes.

6           Q.    Can you tell me which of the two tanks

7 was the one that was removed by the product type?

8           A.    No, I don't know.

9           Q.    When did it come to -- let me back up.

10 You said that inventory reconciliation indicated to

11 you that you needed to pay attention to something;

12 is that right?

13          A.    Uh-huh.

14          Q.    How did that come to your attention?

15          A.    Our bookkeeper, Dorothy Vukas, we talked

16 about earlier said, hey, you are losing gasoline.

17          Q.    So she was taking those log sheets you

18 told us about and she was reviewing them and she

19 noticed what?

20          A.    That we were buying more gasoline than we

21 were selling.

22          Q.    So the gasoline was going some place?

23          A.    Correct.

24          Q.    What did you do next?

25          A.    We notified the owner.

1           A.   Typically 450 and then there was no gas  
2    loss.

3           Q.   Did you draw the conclusion at some point  
4    that the --

5           A.   I don't know where we were losing the  
6    gas. I thought maybe we were losing it from the  
7    lines. I didn't know. I didn't really discover  
8    this until the last -- I don't know when, but it  
9    was probably eight to ten months prior to us  
10   putting in the new tank. Do you understand what I  
11   mean?

12          Q.   Yes.

13          A.   Eight to ten months by the time the old  
14   one came out and the new one went in that I had  
15   discovered it. Do you follow me?

16          Q.   You discovered it eight to ten months  
17   before the tank was replaced?

18          A.   Right.

19          Q.   I want to clarify, though. Is it the  
20   volume level that seemed to be the problem in the  
21   tank?

22          A.   It was the volume level.

23          Q.   That is what I am referring to.  
24   Sometimes he would fill it to 550. If he only  
25   filled it to 450, then you didn't detect the

1 fuel or the gas reconciliation records kept by  
2 Dorothy; is that correct?

3 A. We knew there was a loss of product  
4 through the reconciliation, right.

5 Q. You deduced that there was probably a  
6 leak in the gas tank?

7 A. That would be a fair assumption.

8 Q. I think yesterday your testimony was to  
9 the effect that you discovered that problem  
10 sometime in the early part of 1982; is that  
11 correct?

12 MR. TRINKLE: I object, mischaracterizes his  
13 testimony, I think.

14 MR. HANDEL: Q. You can go ahead and  
15 answer.

16 A. Would you state the question again,  
17 please?

18 Q. Sure. I am trying to pinpoint when you  
19 discovered you had a problem. I believe your  
20 testimony yesterday was that it was sometime in the  
21 spring or early part of 1982 that you discovered  
22 you had that problem. Is that in accordance with  
23 your recollection?

24 A. That is my recollection, right, early  
25 1982.

1 1982?

2 Q. He is talking about since 1982.

3 A. From 1982 to the time I left, between  
4 1982 and 1987, do I know of him performing various  
5 work on our gas pumps?

6 Q. That is right.

7 A. Yes, he has.

8 Q. Let's go to paragraph 3. It says "In  
9 late March or early April 1982, I was contacted by  
10 either Leland or Ronald Douglas to determine  
11 whether or not a 550-gallon underground petroleum  
12 storage tank located under the sidewalk in front of  
13 Douglas's 1432 Harrison Street Garage in Oakland,  
14 California was leaking," close quote. Did you  
15 personally contact Musser with regard to this?

16 A. No.

17 Q. Do you know whether Lee did?

18 A. He didn't tell me he did.

19 Q. You don't know one way or the other?

20 A. I don't know one way or another.

21 Q. "On approximately April 19, 1982, Miller  
22 performed an 'air test' on the tank in question to  
23 determine whether or not it was leaking," close  
24 quote. Do you personally know whether or not  
25 Miller performed an air test on the tank?

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1           A.    You know, I may not have been around. I  
2           may have been on vacation. That was in 1982 in  
3           March. I may have been out of the country. I am  
4           not sure. I don't remember him ever doing that to  
5           my knowledge.

6           Q.    Did you take an extended vacation  
7           sometime in 1982?

8           A.    During 1982 I was gone for five weeks,  
9           six weeks. I don't remember. I think it was March  
10          and April or April and May. I went to Europe, I  
11          believe. I may not have been around.

12          Q.    Who was, if anyone, in charge of the  
13          garage while you were on this trip?

14          A.    Debbie would have been in charge of the  
15          garage. So he -- if he says he did --

16          Q.    You have no personal knowledge as to  
17          whether --

18          A.    I --

19          Q.    Let me finish. You keep interrupting. I  
20          know you are anxious to get this over with. You  
21          don't know personally whether or not Miller  
22          performed the air test that is referred to?

23          A.    I do not, no.

24          Q.    Did you ever discuss with Lee or anybody  
25          else at Douglas this air test that is referred to

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1 here?

2 A. No, because I didn't know anything about  
3 it.

4 Q. When you got back from your trip, did  
5 Debbie say anything about an air test being  
6 performed on the tank?

7 A. Not really, no.

8 Q. At any time before the tank was replaced,  
9 did anyone ever tell you that Miller Company had  
10 performed some type of test on the tank?

11 A. Before the replacement of the tank?

12 Q. Yes.

13 A. I knew that something had been checked  
14 out. I didn't know who did it, but I knew someone  
15 had checked for a leak.

16 Q. How did this come to your attention that  
17 someone had done something to check for a leak?

18 A. I had asked Lee.

19 Q. Do you remember in substance what Lee  
20 told you?

21 A. He just said it had been checked and  
22 apparently there is a leak.

23 Q. Did he tell you that the tank had been  
24 checked and that the check confirmed your previous  
25 belief that there was a leak?

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1 integrity of an underground petroleum storage  
2 tank."

3 With that background, does that refresh your  
4 recollection of anybody coming out and performing  
5 air test on the tank at the site?

6 A. No.

7 Q. Let me ask you one last question about  
8 this particular area. Do you have any recollection  
9 of receiving an estimate from the Miller Company in  
10 May of 1982?

11 A. Regarding the removal of that tank?

12 Q. Pardon me?

13 A. An estimate regarding the removal of the  
14 tank?

15 Q. Yes.

16 A. Well, I know that we had been in contact  
17 with them and that they were preparing an estimate  
18 and I assume we got an estimate.

19 MR. DRUMMOND: Let me show you -- let's mark  
20 this next.

21 (Document more particularly  
22 described in the index marked  
23 for identification as Defendants'  
24 Exhibit No. 24)

25 MR. DRUMMOND: Q. Exhibit 24 is a

1 approximately before the tank was actually replaced  
2 did you and your partners begin discussions about  
3 whether to replace this tank?

4 A. Would you mind putting that a different  
5 way?

6 Q. Sure. The tank was replaced sometime in  
7 1982, as you recall; right?

8 A. 550 tank, okay.

9 Q. This is the number 2 tank on the diagram  
10 that we referred to earlier?

11 A. You are referring to that number 2 tank.

12 Q. My question is, how long before the tank  
13 was actually replaced did you and your partners  
14 talk about replacing it?

15 A. Six to eight months.

16 Q. What were the circumstances that led to  
17 that discussion?

18 A. You mean --

19 Q. How did it come up?

20 A. Well, it came up that it was losing gas.

21 Q. How did you first hear about that?

22 A. I heard through my father.

23 Q. What did Sanford tell you?

24 A. He said we were losing gas and so I said,  
25 well, we've got to replace it. So he said he would



1           A.    I was never aware that there were  
2 problems until the issue of this case came up.

3           Q.    Did you -- do you know in fact whether or  
4 not a tank or tanks at the Harrison Street garage  
5 were ever replaced?

6           A.    I knew one was replaced, yes.

7           Q.    The time frame of that, sir, do you  
8 recall?

9           A.    Approximately in 1982.

10          Q.    How did Douglas learn that something  
11 needed to be done with the tank or tanks?

12          A.    Through inventory recollection --  
13 reconciliation.

14          Q.    What size tank was it that was eventually  
15 taken out?

16          A.    I am not sure. It was either 500 or a  
17 thousand and I don't know for sure which one came  
18 out.

19          Q.    Do you know what kind of product was in  
20 it?

21          A.    It would have been the same thing we were  
22 selling, gasoline either supreme or regular.

23          Q.    There were two pumps, right?

24          A.    Right.

25          Q.    And two tanks?

1           A.    I saw the tank on the truck.

2           Q.    Did you see the tank as it was being  
3 excavated or only after it was on the truck?

4           A.    On the truck.  I came back and I saw it  
5 on the truck.

6           Q.    Did you see any holes in the tank?

7           A.    I saw a hole on the cylinder.  I saw the  
8 hole on the side, not on this side but on the  
9 length side -- excuse me, on the width side.

10          Q.    If we are talking about a cylinder, you  
11 saw it on the --

12          A.    The cylinder is round like this.  I saw  
13 it on one of the ends.

14          Q.    Was the hole you saw on the fill end or  
15 on the end that is the end with the fill pipe in  
16 it?

17          A.    I am not sure of that.  It was on -- I  
18 don't know what side it was on.

19          Q.    Don't guess.

20          A.    I don't know.  I saw the hole.  That is  
21 all I can tell you.  I don't know what end of the  
22 cylinder I saw it on.

23          Q.    Let's talk a little more about what you  
24 did to look at the tank.  Did you actually go to  
25 the truck and walk around it to look at it?

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1 circle and indicate where you saw the hole.

2 A. It was right here. I will draw the  
3 circle. I am not too good at making round  
4 circles. Do you trust my judgment?

5 Q. We will.

6 A. Here it is up in here.

7 Q. You have indicated that the hole was near  
8 the top of the end?

9 A. But I am not saying how the hole got  
10 there. What I am saying is when the -- it is  
11 possible because I didn't -- it is possible when  
12 they pulled it out that the chain -- the torque on  
13 the chain could have pushed that in a little bit  
14 more. It was the size of a half dollar on the  
15 outside, but as you look in, it narrows down to  
16 where it is only maybe the size of a dime. Do you  
17 follow me?

18 Q. Did you actually get up on the truck and  
19 look at it?

20 A. I was within a couple of feet of it.

21 Q. How high was the truck bed in relation to  
22 you? I know these are --

23 A. That is okay. No problem. The truck bed  
24 is a truck bed, comes up to the chest. The thing  
25 was another couple of feet up, so it was probably

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1 A. When was the new tank put in?

2 Q. We will come to that. You will see some  
3 documents dated October, November, December 1982.

4 A. It was during the rainy season, right. I  
5 just knew that someone had checked -- I had  
6 surmised or I had heard that someone had checked it  
7 for a leak. I don't know who it was that checked  
8 it for a leak. I don't know who told me.

9 Q. Let's get the sequence straight here.  
10 First of all, eight to ten months before the tank  
11 is replaced, Douglas partners collectively decided  
12 there is a problem with loss of product?

13 A. I don't know eight to ten months. I  
14 don't know that.

15 Q. Some months before the tank was replaced?

16 A. Sometime before. How many months, I  
17 can't answer that question.

18 Q. After that as a separate step, you are  
19 told that someone has checked the tank for a leak?

20 A. Right.

21 Q. Were you also told that the result of the  
22 tank check was, yes, there is a problem and the  
23 tank is leaking?

24 A. There is a problem, right, or there was a  
25 problem.

1 Exhibit 3 is indicated as number 2 and Exhibit 4 is  
2 indicated as number 3 which is the source of this  
3 confusion.

4 MR. TRINKLE: They are all part of Exhibit 24  
5 to this deposition.

6 A. I don't have an Exhibit 4. Okay.

7 MR. MORRISON: Let's refer to the bottom of  
8 the page.

9 A. I see. Okay.

10 MR. DRUMMOND: Q. I object. I want to  
11 refer to the fax number coding at the top of the  
12 page which even makes it worse. No, let's use the  
13 exhibit numbers at the bottom of the page. Exhibit  
14 Number 2 was the one I was first referring to. It  
15 has a date of May 4th, 1982. Do you see that?

16 A. Yes, I see that.

17 Q. The next two exhibits, Exhibit 3 and 4,  
18 are two more quotes from the same company, both of  
19 those being dated in October --

20 A. Right.

21 Q. -- a couple of months later. My question  
22 to you was, as you sit here today, do you have any  
23 recollection of any explanation for the passage of  
24 time between those quotes?

25 A. No, I don't know why.

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1 have gone back and forth that Ron had conversations  
2 with people and there were names attached. Other  
3 than that, I don't know.

4 Q. Let's take a look at Paragraph 11, if you  
5 would, please.

6 Okay?

7 A. Yes.

8 Q. Is that true?

9 A. No.

10 Q. Pardon me?

11 A. No.

12 Q. Paragraph 12, would you read that for a  
13 second?

14 A. Okay.

15 Q. Is Paragraph 12 --

16 A. Yes.

17 Q. -- true?

18 A. That's correct.

19 Q. There where it says "In 1988, when  
20 Douglas's lease was not renewed, Douglas voluntarily  
21 vacated the property leaving the two tanks in place.  
22 There was never any discussion as to whether another  
23 tenant was going to use the tanks. There was never  
24 any reference to their being abandoned. Petitioners  
25 never demanded removal of the tanks."

1 anything to Mr. Bacharach about Bernard's work  
2 being different in any respects from what was  
3 proposed by Miller?

4 A. No.

5 Q. To your knowledge your dad never told Mr.  
6 Bacharach that the quality of the work that Bernard  
7 did would be any different from what Miller had  
8 proposed to do?

9 A. To my knowledge I don't know what his  
10 conversations were with Mr. Bacharach, the exact  
11 content of the conversation. I know he did speak  
12 to him on several occasions, but I don't know the  
13 content of the conversations regarding the  
14 installation of the tank.

15 Q. Once Bernard completed the work, did you  
16 assume that whatever problem had existed with the  
17 tank had been taken care of?

18 A. Yes.

19 Q. Do you know whether or not your dad told  
20 the same thing to Mr. Bacharach, i.e., that the  
21 problem has been taken care of?

22 A. Well, like I explained to you, Randy, my  
23 father did talk to Mr. Bacharach and we were  
24 satisfied that the installation of the tank was  
25 satisfactory and met all the codes necessary to

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1 complete the job and meet the requirements.

2 Q. No one to your knowledge ever told Mr.  
3 Bacharach that there was any soil contamination  
4 associated with this tank leakage?

5 A. Not to my knowledge.

6 MR. DRUMMOND: Read the question and answer  
7 back, please.

8 (Record read)

9 MR. MORRISON: Q. I want to show you next a  
10 document marked Exhibit 28 to Lee's deposition.  
11 This is a January 10, 1983 letter to Alvin  
12 Bacharach from Ron Douglas.

13 A. Okay.

14 Q. This particular letter doesn't have a  
15 signature on it.

16 A. It is okay. I do remember that there  
17 was -- I do remember. Now that I see the letter, I  
18 do remember talking to Mr. Bacharach about this.

19 Q. Was this letter sent, to the best of your  
20 knowledge?

21 A. Sure, it was. We wanted our money.

22 Q. The letter begins, quote, "As per our  
23 conversation regarding the installation of a gas  
24 tank at 1432 Harrison Street, we had an original  
25 estimate from Robert Miller (enclosed) for

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1 complete the job and meet the requirements.

2 Q. No one to your knowledge ever told Mr.  
3 Bacharach that there was any soil contamination  
4 associated with this tank leakage?

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7 back, please.

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10 document marked Exhibit 28 to Lee's deposition.  
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13 A. Okay.

14 Q. This particular letter doesn't have a  
15 signature on it.

16 A. It is okay. I do remember that there  
17 was -- I do remember. Now that I see the letter, I  
18 do remember talking to Mr. Bacharach about this.

19 Q. Was this letter sent, to the best of your  
20 knowledge?

21 A. Sure, it was. We wanted our money.

22 Q. The letter begins, quote, "As per our  
23 conversation regarding the installation of a gas  
24 tank at 1432 Harrison Street, we had an original  
25 estimate from Robert Miller (enclosed) for

1           A.    Because I do recall that there was an  
2 effort made to have Mr. Bacharach pay for all or  
3 some share of the cost.  And he certainly wouldn't  
4 have accepted that based -- because we wanted to  
5 change tanks, there had to be some reason.  And we  
6 had to tell him, I'm sure, that the reason the tanks  
7 are being changed is because they have a leak in  
8 them.

9           Q.    Do you recall any discussions with Mr.  
10 Bacharach and somebody from Douglas about the extent  
11 of the clean-up of the gasoline that may have leaked  
12 into the soil in 1983?

13           MR. MORRISON:  Objection.  Assumes facts not  
14 in evidence that there was a clean-up of the soil in  
15 1982 or '83.

16           MR. TRINKLE:  And the question is vague and  
17 ambiguous in terms of the time frame, whether you  
18 are talking about in 1982 or 1983 or whether you are  
19 talking about at any time.

20           MR. DRUMMOND:  Fair enough.  I mean at the  
21 time that the tank was taken out.

22           A.    At the time the tank was taken out, yes.

23           MR. DRUMMOND:    Q.    Was there any discussion  
24 by anyone at Douglas with Mr. Bacharach about  
25 whether it was necessary to remove any of the soil

1 because of the gasoline leaks?

2 A. I'm rather confident that we never  
3 discussed that because that was never brought to our  
4 attention.

5 I can see this and we read this (indicating),  
6 but in terms of removal of the soil, contamination  
7 of the soil, frankly, as I can recall, that wasn't  
8 an issue and I don't recall it ever being discussed.

9 Q. Take a look, again, at Exhibit 20 for me,  
10 would you, sir? Not the whole thing, I just want to  
11 ask some questions about how that document came to  
12 be.

13 Exhibit 20 is the 1981 lease?

14 A. Uh-huh.

15 Q. Who drafted that lease?

16 A. Mr. Bacharach.

17 Q. I beg your pardon?

18 A. Mr. Bacharach.

19 Q. And were there any attorneys used in  
20 connection with the drafting of the lease, if you  
21 know?

22 MR. TRINKLE: By who?

23 A. Not on ours -- not on our part.

24 MR. DRUMMOND: Q. Do you know whether Mr.  
25 Bacharach used any attorneys?

3. Concurrent with the purchase of the business, Douglas entered into a lease for the property with the Petitioners. Two additional leases extending Douglas's leasehold interest to March 31, 1988 were subsequently executed (Copies of the leases are attached to Petitioner's Petition as Exhibits "A", "B" and "C").

4. The leases contain provision regarding Douglas's responsibility for "leakage". No discussion whatsoever concerning the meaning of this term took place; it was assumed by Douglas that this referred to damage due to problems with the sewage system, the water pipes and the sprinkler system on the premises.

5. The only environmental issue that was discussed was that concerning the possibility that vehicular access to the garage would be curtailed by governmental action to address air pollution problems. Paragraph 35 of the first lease (Exhibit "A") and Paragraph 34 of the second lease (Exhibit "B") was the result of these concerns. No discussion at all of the underground tanks took place.

6. From 1972 through 1988, Douglas operated a parking garage on the premises. As a convenience to customers of the garage, gasoline was made available. The amount of gasoline pumped was extremely small, averaging 1,000 gallons per month over the term of the leases.

7. In 1975, it appears that Douglas replaced one of Petitioners' 550 gallon underground storage tanks. Because the tank to be replaced belonged to Petitioners, Douglas requested that Petitioners participate financially in the cost of its replacement. Petitioners refused. Apparently, Douglas thereupon replaced the tank at Douglas's expense.

I, LELAND DOUGLAS, am a general partner in Douglas Motor Services and have been authorized to execute this verification on its behalf. I declare under penalty of perjury under the laws of the State of California that the matters stated in this declaration are true and correct and that this declaration was executed on March 25, 1991, at Oakland California.

Dated: March 25, 1991

By: 

Leland Douglas

1 put in a larger tank.

2 Q. Than the one that was originally there?

3 A. Than the one that was there, but as I can  
4 recall, those are the only options -- those were  
5 the only considerations that we had.

6 Q. Did you consider not putting a new tank  
7 in at all, if you recall?

8 A. No.

9 Q. Do you have any recollection, sir, of  
0 repairs to or removal of a tank in 1975 at the  
1 Harrison Street garage?

12 A. No.

13 Q. Going back to the luncheon meeting where  
14 you talked with Mr. Bacharach about the need to  
15 remove that one tank that was not being used, a  
16 couple of questions. First of all, did you ever  
17 have any conversations with Mr. Bacharach or Mr.  
18 Borsuk or any other representative of that landlord  
19 group about the need to remove that tank or any  
20 tank?

21 A. I don't recall any other discussion  
22 regarding the removal of the tank.

23 Q. After the luncheon, did you have any  
24 conversations at any later date with Mr. Bacharach  
25 or Mr. Borsuk or other representatives of the

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1 MR. MORRISON: Q. Yes.

2 A. No.

3 Q. Clarify this. The tank that had the  
4 water in it was not the tank that was taken out  
5 when you were there?

6 A. The tank that I considered having  
7 excessive water, which is number 1 on the diagram,  
8 was not taken out. It was closed -- well, we just  
9 didn't dispense gas anymore.

10 Q. Then at some point while you were at the  
11 Harrison Street property, the other tank was  
12 removed --

13 A. It was removed.

14 Q. -- and replaced with a one thousand  
15 gallon tank?

16 A. Right.

17 Q. We will come back to that. While you  
18 were at the site, Ron, who was primarily  
19 responsible for pumping the gas at Harrison Street?

20 A. Well, any one of the employees that were  
21 there would be responsible. That is part of their  
22 job.

23 Q. That could have been Oscar?

24 A. It could have been Oscar. It could have  
25 been Debbie. It could have been me. It could have

1 tank, never been a thousand gallon tank. That was  
2 one of our major complaints. We needed a thousand  
3 gallon tank there and we do not have one.

4 Q. When you say it was one of your major  
5 complaints --

6 A. Both of these were 550. So in 1982 or  
7 1983 I say to my father and Lee, "We need a  
8 thousand gallon tank. We don't have one." Now if  
9 this was a thousand gallon tank, why would I say  
10 that?

11 Q. Meaning while you weren't using --

12 A. Not only that, why would I shut it down  
13 when it was just installed? It was installed in  
14 1975. I am saying we shut it down. I stopped  
15 selling gas out of that. If it is a brand new  
16 thousand gallon tank, why would I do that?

17 I don't remember this ever going in. That is  
18 what I am saying. There would be no purpose for me  
19 to shut it down if it has just been installed.  
20 Five, six, seven years for a tank is nothing. They  
21 are supposed to last 20 years or more.

22 Q. Let's just stay with what you remember.  
23 It is your testimony based on what you have seen so  
24 far that tank number 1 was the one that was closed  
25 in the sense it wasn't used anymore?

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1 A. Right.

2 Q. That to your recollection was not  
3 actually replaced?

4 A. It wasn't replaced because it is only a  
5 550.

6 MR. TRINKLE: He is asking your best recall  
7 that that tank was not replaced.

8 A. My recollection, it was not replaced.

9 MR. MORRISON: Q. At some later time like  
10 1982, the tank on the left, number 2, was replaced?

11 A. Yes. Excuse me. Did I make myself clear  
12 on that? I am saying --

13 MR. TRINKLE: I think so.

14 A. Do you understand what I am saying?

15 MR. TRINKLE: Yes.

16 MR. MORRISON: Q. We are going to talk some  
17 more about these tanks.

18 A. I am sure.

19 Q. There is plenty of time to clarify. You  
20 may think differently after you see some more  
21 documents. When this tank was -- when you ceased  
22 use of this tank after discovering this water  
23 problem, I assume there was some discussion among  
24 the Douglas partners about what to do about the  
25 tank?

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1 exhibit number for it in a moment. Do you remember  
2 seeing that letter yesterday?

3 A. Yes, I did see that.

4 Q. It is Exhibit 14. As I recall our  
5 discussion yesterday, and please correct me if I am  
6 wrong on this, you said that the tank was not in  
7 fact replaced?

8 A. I said that I do not remember that number  
9 1 tank ever being replaced, the number 1 tank to  
10 the right.

11 Q. There was discussion among the Douglas  
12 partners in 1975, wasn't there?

13 A. I can see that.

14 Q. Doesn't that mean that you ceased use of  
15 the tank sometime in 1975?

16 A. No, not necessarily. Probably what he  
17 meant was he wanted --

18 MR. TRINKLE: Don't speculate unless you  
19 know.

20 A. I don't know. I could speculate but it  
21 is not right. I don't want to second guess him.

22 MR. MORRISON: Q. This is your own  
23 recollection we are talking about now. Is it  
24 correct that a problem with water in the number 1  
25 tank was discovered by the Douglas partners in

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1 on the bottom of the tank. So they keep it about  
2 an inch off the bottom.

3 Q. At any time when you were physically on  
4 site at Harrison Street, did you detect any water  
5 levels that were above this range that you  
6 considered normal for condensation?

7 A. Would you rephrase that, please?

8 Q. At any time when you were physically at  
9 Harrison Street, were there any water readings in  
10 the tank?

11 A. Which tank now?

12 Q. Either of the two tanks at Harrison  
13 Street that you considered beyond what you normally  
14 expect for condensation.

15 A. Yes.

16 MR. TRINKLE: Talking about when you were  
17 physically on site.

18 A. Yes.

19 MR. MORRISON: Q. On how many occasions  
20 approximately did it happen that you found water  
21 that seemed abnormal?

22 A. Excessive?

23 Q. Yes.

24 A. If it was excessive, three or four times,  
25 maybe half a dozen times. I would say, hey, there

1 is something wrong here. Then I did something  
2 about it.

3 Q. Did that actually happen? There were  
4 occasions when that happened?

5 A. There was an occasion.

6 Q. Was there one or several occasions?

7 A. One.

8 Q. What did you do on that occasion?

9 A. One occasion or one tank? I said half a  
10 dozen occasions I did see excessive water in one  
11 underground tank.

12 Q. What levels? Can you remember in terms  
13 of inches or gallons how much water you were  
14 detecting?

15 A. The one tank in the ground did have at  
16 least an inch and a half to two inches of water  
17 that I can recall.

18 Q. That seemed excessive?

19 A. It was excessive.

20 Q. Compared to what you were seeing  
21 routinely?

22 A. Because it was pumping water into the  
23 tanks and then, of course, that is a big job to  
24 clean those up. We didn't know where the water was  
25 coming from.

1           A.    Who knows?  Probably.  I don't know.  I  
2           can't remember.

3           Q.    Significant work?

4           A.    It was very difficult, very involved.  It  
5           was very complicated, believe me.

6           Q.    When this problem came to your attention,  
7           what did you do with regard to the tank?

8           A.    Well, the one tank I am referring to that  
9           one -- not occasion but one gas tank.  I didn't say  
10          occasion, gas tank.  We had no choice but to close  
11          it down completely.

12          Q.    Do you remember what year this was?

13          A.    Pardon?

14          Q.    Do you remember what year this was?

15          A.    I don't know the year.

16          Q.    When you say you had no choice but to  
17          close the tank down, what did that --

18          A.    Or else replace it.

19          Q.    That is what I am asking.  What did you  
20          do to close it down?

21          A.    We just didn't put any gas in there.

22          Q.    Did you replace it at some point?

23          A.    No, not that I know of.  You didn't  
24          specify.  You didn't ask me which one.

25          Q.    I will do that in this way.

1 Q. Just looking at our Exhibit 3, can you  
2 tell me which of the two tanks was the one that was  
3 in operation at the time you left?  
4 A. We were using a thousand gallon tank.  
5 Which one that was, I am not sure.  
6 Q. Was there any product in the other tank  
7 that was not being used when you left?  
8 A. No.  
9 Q. Pardon me?  
10 A. Not that I know of, no.  
11 Q. What had that tank been used for  
12 historically?  
13 A. Well, for gasoline.  
14 Q. What kind? Any difference between the  
15 two?  
16 A. There would have been. One would have  
17 sold regular and one would have sold supreme. We  
18 stopped selling regular and we sold only supreme  
19 gasoline.  
20 Q. When did you stop selling the regular?  
21 A. That would have been two or three years  
22 prior to our leaving the facility.  
23 Q. Why did you quit selling the regular?  
24 A. Well, for two reasons. We were selling  
25 so little and, number two, the tank had a

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1 continuous problem of having water in it.

2 Q. Water in the bottom of it?

3 A. Right.

4 Q. Do you know whether it had -- whether it  
5 was leaking in any way?

6 A. Well, here we get back to leaking. No, I  
7 don't know whether it was leaking. I do know it  
8 took in water, more than it was worth to evacuate  
9 it and continue to fill it up.

10 Q. From the time you decided to discontinue  
11 using that tank to the time that you left the  
12 Harrison Street garage, was there any attempt made  
13 to remove whatever was in the tank?

14 A. Well, we had pumped out -- as I recall, I  
15 told you earlier that we could only pump down to a  
16 certain level and we pumped down to that level. We  
17 pumped everything out. That was it.

18 Q. Was there anything left in the tank at  
19 all, as far as you know?

20 A. Water.

21 Q. Did you try to remove that water?

22 A. No.

23 Q. I think I am correct, am I not, that by  
24 the time you left the Harrison Street garage, you  
25 were familiar with the requirements for closure for

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1 AFTERNOON SESSION

1:15 p.m.

2  
3 MR. MORRISON: Q. Ron, would you take a  
4 look at Exhibit 81 which is the underground storage  
5 tank information?

6 A. All right.

7 Q. I would like to ask you to turn to the  
8 second page again which is page 3 in the middle and  
9 look in the right-hand column under the heading  
10 Other provisions.

11 A. Other provisions?

12 Q. Yes.

13 A. I see it.

14 Q. Would you read that for a moment to  
15 yourself? Do you see the language that says,  
16 quote, "Tanks to be abandoned must submit closure  
17 plans to the local enforcement agency"?

18 A. Uh-huh. Yes, I do.

19 Q. Douglas ceased use of tank number 1 at  
20 Harrison Street sometime in 1982 or thereabouts  
21 based on what you told us today; right?

22 A. Yes, 1982-83.

23 Q. Did Douglas ever submit a closure plan to  
24 any enforcement agency regarding that tank?

25 A. Not to my knowledge.

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1 Q. That tank was abandoned in the sense that  
2 it was no longer used by Douglas; isn't that right?

3 A. Yes, I believe that is true.

4 Q. Let's turn to the last page of Exhibit 81  
5 which is this Howard Harlan information letter that  
6 we looked at earlier.

7 A. Yes.

8 Q. Would you look at the third paragraph,  
9 the one that begins "It is in your vital economic  
10 interest?" You told us earlier that this is a  
11 letter you had looked at; correct?

12 A. Right.

13 Q. You marked "air park" at the top  
14 referring to Douglas's facility out at the airport?

15 A. Correct.

16 Q. When you wrote this notation on there, to  
17 your knowledge was this passed on to David Flett?

18 A. Yes, it was.

19 Q. Did you intend for David to take some  
20 action regarding this matter?

21 A. Just to check his pumps or his tanks,  
22 rather.

23 Q. Did you have any discussions with David  
24 about whether he ever did take any action?

25 A. No.

1 why. If he did, I may have said "It leaks." But  
2 that isn't -- I use that "leaks" in a generic sense.  
3 It was taking in water, is what I knew. And if I  
4 used "leaks," that -- that's what I meant.

5 Q. Do you have a specific recollection of  
6 having told Mr. Bacharach before the end of the  
7 lease that at least one of the tanks at the site  
8 leaked?

9 A. I do not have a specific recollection of  
10 that.

11 Q. Do you recall talking to Mr. Davis at the  
12 time of your meeting in April of 1990 about  
13 receiving notices requiring the removal of any of  
14 the tanks at the Harrison Street Garage?

15 A. No, I never got a notice to remove the  
16 tank. That I can recall.

17 Q. If you will take another look at our  
18 Exhibit 38 on the second page, the next-to-last line  
19 and the last line. The next-to-last line says  
20 "Douglas gave me copy of tank abandonment notice."  
21 And the next line says "Al must have gotten similar  
22 notice." And then there is an "OK" with your  
23 initials.

24 When you put that initial on there, did that --  
25 did you intend to mean that the statement that "Al

1 must have gotten similar notice" was correct?

2 A. Well, first, I'm not sure what I gave to  
3 Mr. Davis. All along, I have never hidden the fact  
4 with any agency that a tank was abandoned. And  
5 throughout you have shown me documents that I have  
6 completed or that have been completed, and  
7 whenever -- at least in the latter years, whenever  
8 there was a statement which said how many tanks are  
9 there, I would say -- I would either say two and one  
10 is abandoned or simply one is abandoned.

11 So, that may be -- because I have reported  
12 that, if it was ever asked. I have the same  
13 situation, incidentally, on Webster Street. So, I'm  
14 not hiding anything.

15 I don't recall that I had ever received a  
16 notice from any agency which says "You have a tank  
17 that's abandoned, take it out."

18 MR. DRUMMOND: Okay. Let's mark this next.

19 (Document more particularly  
20 described in the index marked  
21 for identification Exhibit 39)

22 MR. DRUMMOND: Q. Take a look at Exhibit 39  
23 there, sir, if you would.

24 Have you ever seen this document before?

25 A. Yes.

1 quit using it.

2 Q. That left you with one 550?

3 A. Yes, right.

4 Q. Was that enough for the volume you  
5 needed?

6 A. It was enough because we could get  
7 deliveries a couple of times a week.

8 Q. You could make up for the shortfall by  
9 increasing the frequency of the deliveries?

10 A. Right, exactly.

11 Q. Let's show Ron another document that was  
12 marked at Lee's deposition, if you can pull it.  
13 That is Exhibit 14. You and I can look at this  
14 together in the meanwhile.

15 For the record Exhibit 14 is an October 28,  
16 1975 letter from Alvin H. Bacharach to Sanford  
17 Douglas regarding the gasoline tank at 1434  
18 Harrison Street.

19 Have you looked at Exhibit 14 for a moment?

20 MS. PETERSON: I don't have Exhibit 14.

21 MR. MORRISON: Q. Do you remember any  
22 discussion by the Douglas partners --

23 A. Excuse me, just let me finish reading  
24 this.

25 Q. Of course. So far you have told us that

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1 you didn't think the tank with the water in it was  
2 replaced.

3 A. I don't recall it ever being replaced.

4 Q. This letter that we have looked at that  
5 has been marked as Exhibit 14 to Lee's deposition  
6 talks about a tank replacement?

7 A. Right.

8 Q. Does this help you recall whether in fact  
9 there was a replacement of one of the storage tanks  
10 in 1975?

11 A. You don't know my father like I know  
12 him. He is going to do everything he can up to a  
13 certain point to get someone else to pay for  
14 something. If Alvin decided he didn't want to pay  
15 for it, then that would mean that the burden of the  
16 payment would be on our shoulders.

17 So my father, being I think successful,  
18 decided, well, one tank was enough. So why should  
19 we replace it if we have to pay for it? That is  
20 like an opinion, of course.

21 Q. You don't interpret this document to mean  
22 that the tank was actually replaced?

23 A. No, that is not an interpretation. You  
24 don't know my father like I know him. He would do  
25 that. He would go up to a certain point and get us

1 whatever he can. If it didn't work, then he would  
2 back down on our side.

3 Q. Having looked at this document and that  
4 tank excavation permit, it is still your belief  
5 then that in fact there was not a tank replacement  
6 in 1975?

7 A. Now I have to explain. I didn't -- was I  
8 there in 1975 or 1979?

9 MR. TRINKLE: Just answer his question.

10 A. No.

11 MR. MORRISON: Q. We are not going to hold  
12 you to the dates. You said you thought you were  
13 there from approximately 1975 to 1979 or 1980.

14 A. I think about that. To my knowledge, we  
15 had never replaced that tank.

16 Q. Was it also correct to say then except  
17 for this tank replacement in 1982 that we will get  
18 to in a little while, you don't remember any other  
19 tank being replaced at Harrison Street while you  
20 were there?

21 A. No.

22 Q. Let's approach this another way. I want  
23 to be sure that we are giving you every hint we can  
24 about any tank replacement in 1975. Do you  
25 remember any discussion with your dad about

1 Q. Today we have discussed that you are not  
2 quite sure when you found out you had the problem  
3 with the first tank, number 1, but you think it was  
4 around the same period of time?

5 A. Yes.

6 Q. As you sit here now, do you recall  
7 whether you discontinued the use of tank number 1  
8 and pumped the gas out of it into the new tank  
9 before or after you had the new tank in the ground?

10 A. It would have been pumped in there after  
11 we put the new tank in the ground.

12 Q. Discontinued the use of tank number 1  
13 before or after you put tank number 2 in the  
14 ground?

15 A. We discontinued the use of it after we  
16 took the gas out.

17 Q. I understand that. My question is -- I  
18 am trying to get into the chronology. Was there  
19 ever a time when you discontinued use of tank  
20 number 1 before you had tank number 2 available and  
21 thereafter pumped the gas in?

22 A. No, there was no lapse of time.

23 Q. At all times you were using tank number  
24 1?

25 A. Yes, until tank number 2 was

1 operational.

2 Q. Did you ever discontinue the use of tank  
3 number 2 prior to it being replaced by a new tank?

4 A. No.

5 Q. I have a couple more and then we can  
6 break. I had an indication we were going to break  
7 at 4:00. Going back to Mr. Skjoldager at the very  
8 beginning, were you involved in any of the  
9 negotiations or meetings with Mr. Skjoldager?

10 A. Yes.

11 Q. Did Mr. Skjoldager take you around the  
12 property, show you the property?

13 A. Briefly.

14 Q. Do you recall whether he indicated the  
15 existence of any tanks on the property?

16 A. Talking about what type of tank?

17 Q. Underground storage tanks.

18 A. No. I just knew about the two on the  
19 street.

20 Q. Did he indicate who owned those tanks?

21 A. Yes.

22 Q. Who did he indicate owned those tanks?

23 A. He said Mr. Bacharach owned them.

24 Q. Did he indicate who had responsibility  
25 for maintaining the tanks?



1 Q. Let's go back to our document.

2 A. This one here was replaced with the  
3 thousand.

4 Q. The one that is designated as number 2  
5 was replaced with a thousand?

6 A. Right. This one here, is this supposed  
7 to be this one here?

8 Q. I am not suggesting that because I don't  
9 know. We want to find out what you can tell us  
10 about it.

11 A. All right.

12 Q. Let's go back to basics. In 1975 do you  
13 know whether or not one of the 550 gallon tanks was  
14 replaced with a thousand gallon tank?

15 A. No, it was -- it couldn't be replaced  
16 because that was only a 550 gallon tank.

17 Q. Let's take a look under remarks.

18 A. I don't care what this says.

19 Q. We are going to use this document to help  
20 you remember. It says under remarks "Remove one  
21 550 gallon tank and install one 1,000 gallon  
22 tank." Does that help you remember whether that  
23 work was done in 1975?

24 A. The reason I am saying that is because  
25 that tank on the right has always been a 550 gallon

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1 tank, never been a thousand gallon tank. That was  
2 one of our major complaints. We needed a thousand  
3 gallon tank there and we do not have one.

4 Q. When you say it was one of your major  
5 complaints --

6 A. Both of these were 550. So in 1982 or  
7 1983 I say to my father and Lee, "We need a  
8 thousand gallon tank. We don't have one." Now if  
9 this was a thousand gallon tank, why would I say  
10 that?

11 Q. Meaning while you weren't using --

12 A. Not only that, why would I shut it down  
13 when it was just installed? It was installed in  
14 1975. I am saying we shut it down. I stopped  
15 selling gas out of that. If it is a brand new  
16 thousand gallon tank, why would I do that?

17 I don't remember this ever going in. That is  
18 what I am saying. There would be no purpose for me  
19 to shut it down if it has just been installed.  
20 Five, six, seven years for a tank is nothing. They  
21 are supposed to last 20 years or more.

22 Q. Let's just stay with what you remember.  
23 It is your testimony based on what you have seen so  
24 far that tank number 1 was the one that was closed  
25 in the sense it wasn't used anymore?

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1 months or four months prior to the installation of  
2 the tank.

3 Q. So it was the same -- same rough time  
4 period that the other tank was replaced that the  
5 first tank was closed down?

6 A. Right, within the certain time frame. I  
7 am not quite sure of the time frame on that, but it  
8 was during three or four months. I don't know for  
9 sure.

10 Q. At any time up to the point when Douglas  
11 made the decision to cease using that number 1 tank  
12 that we have talked about, number 1 on the diagram,  
13 was there any discussion among the Douglas partners  
14 about whether gasoline was leaking out of that  
15 tank?

16 A. No.

17 Q. We talked earlier about your relationship  
18 with Chevron as a supplier of gasoline for the  
19 Douglas facilities?

20 A. Not a supplier, a purchaser, as a  
21 customer. We weren't supplying gas.

22 Q. They were supplying you with gas?

23 A. Right.

24 Q. I am going to show you a document that  
25 was marked as Exhibit 15 to Lee's deposition and

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1 transferred from 1 into 2, and I couldn't transfer  
2 if I didn't have two. So I know we would have --  
3 it would have to be after 1982.

4 Q. Let's get back to my question.

5 A. It couldn't have been 1975.

6 MR. DRUMMOND: Was the reason that you went  
7 to a thousand gallon tank in 1982 because you  
8 wanted a thousand gallon and you knew that you were  
9 not going to be using the other 500 gallon tank?

10 A. Yes.

11 MR. DRUMMOND: You put in a one thousand  
12 gallon tank which gave you the capacity of the two  
13 500 gallons before?

14 A. Primarily the reason, right.

15 MR. MORRISON: Q. Going back to 1975 when  
16 this problem with water in the tank number 1 came  
17 to light, isn't that right, you discovered it in  
18 1975?

19 A. I am sorry, Randy. I don't believe it  
20 was in 1975. I don't know. I know I transferred  
21 the -- I know I didn't close it down in 1975. I  
22 wasn't even there. I don't think it occurred until  
23 about 1983 or soon after the 1982 installation that  
24 the water started appearing in number 1. I don't  
25 know where I said that 1975, but I don't know why I

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1 would say something like that.

2 MR. MORRISON: Off the record.

3 (Discussion off the record)

4 A. You are getting into an area -- years go  
5 by pretty quick. We are going back to 1975 which  
6 is 17 years back. I don't think I could remember  
7 about water getting into a tank 17 years ago.

8 MR. MORRISON: Q. Do you remember some  
9 discussion yesterday -- we will pull out the  
10 exhibit that relates to it. Remember I showed you  
11 a letter that was from your dad to Mr. Bacharach  
12 about participating in the cost -- the other way  
13 around. It was a letter from Alvin to Sanford  
14 saying that in view of paragraph 28, 29 of the  
15 lease, he wasn't going to pay for the cost incurred  
16 in connection with the tank replacement?

17 A. Okay.

18 Q. Do you remember our discussion on that?

19 A. I am not sure but vaguely.

20 Q. That letter was in 1975. We will pull it  
21 out in a minute for your review. Assuming that  
22 that letter was in 1975, it appears there was some  
23 discussion with Mr. Bacharach by at least your  
24 dad. That is an October 28, 1975 letter that Mr.  
25 Borsuk has kindly furnished us and we will get the

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1 is something wrong here. Then I did something  
2 about it.

3 Q. Did that actually happen? There were  
4 occasions when that happened?

5 A. There was an occasion.

6 Q. Was there one or several occasions?

7 A. One.

8 Q. What did you do on that occasion?

9 A. One occasion or one tank? I said half a  
10 dozen occasions I did see excessive water in one  
11 underground tank.

12 Q. What levels? Can you remember in terms  
13 of inches or gallons how much water you were  
14 detecting?

15 A. The one tank in the ground did have at  
16 least an inch and a half to two inches of water  
17 that I can recall.

18 Q. That seemed excessive?

19 A. It was excessive.

20 Q. Compared to what you were seeing  
21 routinely?

22 A. Because it was pumping water into the  
23 tanks and then, of course, that is a big job to  
24 clean those up. We didn't know where the water was  
25 coming from.

1 Q. When you say it was pumping water into  
2 the tank --

3 A. The gas tanks of customers' cars, not the  
4 tank itself, although the filter is supposed to --  
5 when there is a filter in there and as the water  
6 hits the filter in the pump, it is supposed to seal  
7 off the pump so you can't get -- sell gas anymore.  
8 It inflates the gas filter when it hits water and  
9 then it stops the flow of gas coming in. It didn't  
10 work.

11 Q. Were there occasions then when you  
12 actually got, as far as you could tell, water into  
13 your customers' gas tanks?

14 A. Lots of occasions.

15 Q. Did the customers let you know about  
16 that?

17 A. They had no choice. They were stuck. We  
18 had to tow them in.

19 Q. How many customers were affected by that?

20 A. Half a dozen or more.

21 Q. Did you have to do any repairs to their  
22 cars?

23 A. Yes, of course.

24 Q. Did you have to replace their  
25 carburetors?

1           A.    Who knows?  Probably.  I don't know.  I  
2    can't remember.

3           Q.    Significant work?

4           A.    It was very difficult, very involved.  It  
5    was very complicated, believe me.

6           Q.    When this problem came to your attention,  
7    what did you do with regard to the tank?

8           A.    Well, the one tank I am referring to that  
9    one -- not occasion but one gas tank.  I didn't say  
10   occasion, gas tank.  We had no choice but to close  
11   it down completely.

12          Q.    Do you remember what year this was?

13          A.    Pardon?

14          Q.    Do you remember what year this was?

15          A.    I don't know the year.

16          Q.    When you say you had no choice but to  
17   close the tank down, what did that --

18          A.    Or else replace it.

19          Q.    That is what I am asking.  What did you  
20   do to close it down?

21          A.    We just didn't put any gas in there.

22          Q.    Did you replace it at some point?

23          A.    No, not that I know of.  You didn't  
24   specify.  You didn't ask me which one.

25          Q.    I will do that in this way.



1 Q. Can you tell us by reference to this  
2 diagram which of the two tanks was the problem one?

3 A. 1.

4 Q. Number 1 which is the tank on the right-  
5 hand side?

6 A. Facing the garage on Harrison Street.

7 Q. That tank you say was closed in the sense  
8 it wasn't used anymore?

9 A. We just didn't put gas in there anymore.  
10 We didn't close it down per se. We just didn't  
11 sell gas from there.

12 Q. During the time you were at the Harrison  
13 Street Garage, did you detect any excessive water  
14 levels in the other tank?

15 A. That would be -- I don't recall. I am  
16 sorry. I just don't remember. That would be the  
17 550. I do not recall. I don't know.

18 Q. Weren't they both 550?

19 A. Yes, both 550 at that time.

20 MR. TRINKLE: At what time?

21 A. Both 550 when I was there. Of course,  
22 while I was there, we also installed a thousand  
23 gallon tank. The one we took out of the ground,  
24 now you are asking me if I detected excessive water  
25 in that one?

1 MR. MORRISON: Q. Yes.

2 A. No.

3 Q. Clarify this. The tank that had the  
4 water in it was not the tank that was taken out  
5 when you were there?

6 A. The tank that I considered having  
7 excessive water, which is number 1 on the diagram,  
8 was not taken out. It was closed -- well, we just  
9 didn't dispense gas anymore.

10 Q. Then at some point while you were at the  
11 Harrison Street property, the other tank was  
12 removed --

13 A. It was removed.

14 Q. -- and replaced with a one thousand  
15 gallon tank?

16 A. Right.

17 Q. We will come back to that. While you  
18 were at the site, Ron, who was primarily  
19 responsible for pumping the gas at Harrison Street?

20 A. Well, any one of the employees that were  
21 there would be responsible. That is part of their  
22 job.

23 Q. That could have been Oscar?

24 A. It could have been Oscar. It could have  
25 been Debbie. It could have been me. It could have

1           A.    Thank you very much.  Sorry.  I didn't  
2           mean to, you know, sort of snicker at you, but it  
3           was sort of, you know, but that is your job.

4           MR. DRUMMOND:    Let's take a break for five  
5           minutes.

6           (Recess taken from 2:35 to 2:47)

7           EXAMINATION BY MR. DRUMMOND:

8           MR. DRUMMOND:    Q.    Mr. Douglas, my name is  
9           Donald Drummond.  I am an attorney with the firm of  
10          Lukens and Drummond.  I am the attorney for Steven  
11          Davis and his brother and father.  I want to  
12          apologize in advance.  I wasn't here yesterday and  
13          if I do duplicate some of Mr. Morrison's questions,  
14          which I am sure I will do because he is very  
15          thorough, I apologize in advance.

16          I want you to take your mind, if you would, to  
17          the Harrison Street Garage in 1982 --

18          A.    Uh-huh.

19          Q.    -- to the event when the tank was taken  
20          out of the ground.  Okay?

21          A.    Right.

22          Q.    I think one of the things that we  
23          established today was that the tank that was  
24          abandoned and not used, that either slightly  
25          before, during that period of slightly after you

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1 learned that there were leaks in that and you  
2 ceased using that tank. Am I right?

3 A. The number 1 tank?

4 Q. Yes.

5 A. Yes.

6 MR. TRINKLE: Was your testimony about leaks  
7 or was it about water getting in?

8 A. Water getting into the tank.

9 MR. DRUMMOND: Q. How about gas going out  
10 of it from leaks?

11 A. I don't believe we tested for gas going  
12 out.

13 Q. Did you have any indication at any time  
14 that it might have gasoline leaking out?

15 A. If water comes in, we are assuming gas  
16 went out.

17 Q. I want to focus just on this removal of  
18 the tank, the one that was taken out.

19 A. All right.

20 Q. My understanding is you observed a part  
21 of that; correct?

22 A. I observed, yes.

23 Q. You saw the tank on the truck?

24 A. Right.

25 Q. Can you give me a sense of how long a

1 know.

2 Q. At least it is your understanding that is  
3 where the stick came from?

4 A. It comes originally from the Chevron  
5 dealer or the Chevron manufacturer. I didn't know  
6 the accuracy, although it was pretty accurate. It  
7 has got to be accurate.

8 Q. Sounds like from what you said that most  
9 of the time the driver would do the measuring and  
10 only occasionally your employees?

11 A. Occasionally, correct.

12 Q. On those occasions when your employees  
13 did it, it was because you had maybe had a busy  
14 week and you needed more --

15 A. I would tell them to do it.

16 Q. After the dipstick was inserted into the  
17 tank, were any records kept of the dipstick  
18 readings?

19 A. No.

20 Q. Let's take first the example of the  
21 driver. The driver comes in. He sticks the tank.  
22 He says you need 300 gallons. He just gives you  
23 300 gallons?

24 A. Whatever he has.

25 Q. In that circumstance, you wouldn't keep

80

1 any records that on June 13th the driver said you  
2 needed 300 gallons?

3 A. No.

4 Q. Let's take the other example. You tell  
5 the employee to go out and check the tank. We have  
6 had a busy week. We need 250 gallons. Do you  
7 write that down anywhere?

8 A. No, no reason to write it down.

9 Q. Do you call up Bay City?

10 A. I would call them up, whatever I want to  
11 do. If I feel we are going to run out of gas  
12 before the delivery, I will call them up.

13 Q. Is it correct that there were no written  
14 records kept of these stick readings --

15 A. No.

16 Q. -- during the time you were there?

17 MR. TRINKLE: Again, I am confused in terms  
18 of what period of time we are talking about.

19 MR. MORRISON: Q. During the time he was  
20 there.

21 A. At the time I was there, correct.

22 MR. TRINKLE: You are talking about the time  
23 you were physically on site?

24 A. Right, physically.

25 MR. MORRISON: Q. Do you know whether any

1 written records were kept of stick measurements of  
2 the tank after you left?

3 A. After I left?

4 Q. Right.

5 A. No, there would be no reason at all.

6 Q. No reason for you to know about it?

7 A. No reason for any of us to know. Once  
8 they told us how much gas we needed, it was up to  
9 us to decide how much gas we wanted, if they told  
10 us.

11 Q. We talked about the dipstick. Let's talk  
12 about your gas meter. You had meters on each of  
13 the two pumps?

14 A. Right.

15 Q. How often, if at all, were these meters  
16 calibrated to ensure that they were functioning  
17 correctly?

18 A. Calibrated, well, the Bureau of Weights  
19 and Measure would come in about once or twice a  
20 year and would -- you know what they do, so I don't  
21 have to explain it.

22 Q. This is the Alameda County Bureau of  
23 Weights and Measure?

24 A. Correct.

25 Q. They would determine whether or not the

1 Q. Does she still work for the company?  
2 A. No, she is deceased.  
3 Q. When did she quit working for the  
4 company?  
5 A. When she died.  
6 Q. When was that?  
7 A. 19 -- it was after my father died. So it  
8 would have been probably in the 1988 time.  
9 Q. Had she been the bookkeeper for the  
10 company since the time you started with the  
11 company?  
12 A. Just about. Actually, I think she came  
13 on a little bit later.  
14 Q. Where were the, in 1985 -- let me ask  
15 this question. In 1985 did you take periodic  
16 readings of the contents of the product in the  
17 tanks at the Webster Street garage?  
18 A. Yes.  
19 Q. How often was that done?  
20 A. It was done generally every time they  
21 were filled by the distributor, which would have  
22 been probably once a week.  
23 Q. Once a week approximately?  
24 A. Uh-huh.  
25 Q. Did you have some sort of system of



1 A. Per sale, correct.

2 Q. Did anyone at the office review your  
3 metered sales to determine whether or not -- let me  
4 go back a minute. Were there any records kept  
5 beyond the metered sales -- beyond the daily gas  
6 sheets, what other records, if any, did you have  
7 that told you how much gas was being delivered and  
8 then sold at the Harrison Street Garage?

9 A. There is a delivery invoice and there is  
10 a gas sheet with its meter going out, right.

11 Q. The delivery invoice and then the gas  
12 sheet?

13 A. Right.

14 Q. Did anybody, during the time you were the  
15 manager on site at the garage, have the  
16 responsibility for comparing your metered sales  
17 with your gas deliveries to see if they jibed,  
18 added up?

19 A. The only one I would think would be  
20 Dorothy in the office. I am not sure what she did,  
21 if anything.

22 Q. Nobody else that you know of had any  
23 responsibility for making that comparison?

24 A. That was one of her basic  
25 responsibilities as far as I know.

1 A. That is correct.

2 Q. And then what did he do, turn them in on  
3 a daily basis to the office?

4 A. Not necessarily. The sheet that it was  
5 recorded on had about 30 lines.

6 Q. When he filled that up, he would turn  
7 that in?

8 A. When he filled it up, he would turn it  
9 in.

10 Q. Did he turn it in to the bookkeeper?

11 A. Not to the bookkeeper. It came in to our  
12 office and it went from our office -- well, that is  
13 one and the same, yes.

14 Q. The next business practice I wanted to  
15 ask is this: When one of the fellows went over --  
16 distributor comes in and they go in and they make  
17 the initial reading to find out how much is in the  
18 tank. Did you have a business practice at any time  
19 of reconciling the amount that was shown from his  
20 dipstick reading in the tank to the amount of sales  
21 that had occurred since the last time that the tank  
22 was filled?

23 A. Yes.

24 Q. How did you keep track of those results?

25 A. Well, I can tell you that if we filled up

1 a sheet and we add up the number of gallons that  
2 were on that sheet, you bought ten and he bought  
3 five, we sold 15 gallons for the day. We will know  
4 because when we fill up the tank, it is full at a  
5 certain point. We know there is a thousand gallons  
6 in the tank. Now we go and we add up all the  
7 gallons that we have sold in that -- in whatever  
8 period of time. It may take three or four weeks to  
9 even get to a point where we will do this, but we  
10 have sold so many gallons, and then we come back  
11 and we fill up the tank again and we say, well, we  
12 have filled up the tank and we filled it up with  
13 700 gallons. Now we come over to our sheet where  
14 we have recorded all these sales and we want to see  
15 if we have sold 700 gallons.

16 Q. Did you ever find instances where the  
17 amount that you sold was less than the amount that  
18 you had to fill into the tank?

19 A. When you say ever --

20 Q. Yes.

21 A. -- you are referring ever at our one  
22 location?

23 Q. Right.

24 A. Yes.

25 Q. How often did that happen?

1 detector installed at Harrison Street that you know  
2 of; right?

3 A. A detector, no.

4 MR. TRINKLE: I object, calls for expert  
5 testimony, lack of foundation and legal  
6 conclusion.

7 MR. MORRISON: Q. Were you aware of any  
8 requirements for keeping inventory reconciliation  
9 records for a certain period of time?

10 A. Inventory reconciliation records?

11 Q. Yes. In other words, were you aware of  
12 any requirement that if you were going to monitor  
13 the tanks by keeping track of your inventory --  
14 were you aware that there were specific record  
15 keeping requirements for doing so?

16 A. Not other than our own requirements, not  
17 for anyone else.

18 Q. As far as your own requirements, you  
19 didn't in fact keep written records other than the  
20 metered sales, did you? You didn't keep track of  
21 any of the stick measurements?

22 A. Not when he stuck the stick in there, no,  
23 of course not. It doesn't mean anything.

24 MR. MORRISON: I am going to show you next a  
25 series of inventory reconciliation sheets and we

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1 inventory reconciliation records.

2 MR. DRUMMOND: Good point.

3 Q. Did Douglas, at any time, ever have  
4 inventory reconciliation records for the Harrison  
5 Street Garage after the laws regarding tanks were  
6 enacted?

7 A. Not formal records, but we did do a  
8 reconciliation, yes.

9 Q. And is that the type of records that you  
10 told us about yesterday where you take a meter  
11 reading off of the pump?

12 A. Yes.

13 Q. And do you, today, have any of the  
14 inventory reconciliation records for the Harrison  
15 Street Garage?

16 A. No.

17 Q. When were they disposed of?

18 MR. MORRISON: Well, objection, only to the  
19 extent -- he said he didn't have formal records, he  
20 had some documents they prepared. And you have  
21 referred to records of the inventory reconciliation  
22 as if those are the same thing; they're not.

23 MR. DRUMMOND: Q. Whatever records you kept  
24 of the inventory reconciliation, whatever documents  
25 contained that information, am I correct you don't

1 have any of those documents today?

2 A. That's correct.

3 Q. And I am asking you, as to those  
4 documents, when were they disposed of?

5 A. They would have been disposed of at least  
6 two years ago. It would probably keep the records  
7 for a year. But even at that, that particular  
8 record, that is, how we did a reconciliation, would  
9 have been an informal adding and subtracting on a  
10 piece of paper that our bookkeeper would have done.  
11 And once she told us what she had done, we wouldn't  
12 have even kept that.

13 Q. Do you know whether or not the law  
14 required you to keep those records or documents for  
15 any period of time?

16 A. No.

17 MR. TRINKLE: At what point in time are you  
18 talking about the law being applicable?

19 MR. DRUMMOND: After the law -- as you say  
20 here, after the laws regarding tanks were enacted.

21 MR. TRINKLE: I think you are assuming that  
22 the interpretation of that has not changed over  
23 time, and I don't think that's necessarily an  
24 accurate interpretation.

25 MR. DRUMMOND: Q. Do you know whether there

1 procedures?

2 A. Right.

3 Q. After 1982, after this tank replacement,  
4 were those the same procedures you used to keep  
5 track of your inventory after that?

6 A. Yes.

7 Q. Those procedures, as far as you know,  
8 remained the same up until you left the garage?

9 A. Yes.

10 Q. Do you have any reason to think, Ron,  
11 that those procedures changed at any time after you  
12 left the garage up to the time of your retirement?

13 A. No, they would not change.

14 Q. Nobody ever told you, "Gee, we are doing  
15 things differently now at Harrison Street"?

16 A. It is the same procedure we had for 50  
17 years.

18 Q. I want to show you -- refer you to a  
19 document that we marked yesterday as an exhibit.  
20 This is the Douglas interrogatory answers. I want  
21 to refer you to a collection of interrogatory  
22 answers that has been marked as Exhibit 60 to the  
23 Douglas deposition and refer you specifically to  
24 page 20 which has some questions about these  
25 inventory procedures I've just been asking you

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1           A.    I was not aware of that.

2           Q.    Were you aware of any requirements for  
3 testing of underground storage tanks for integrity;  
4 in other words, to see if the tank was intact?

5           A.    I was aware of the testing for  
6 integrity.

7           Q.    My question was, were you aware of any  
8 requirements for testing for integrity?

9           A.    No, I didn't know what the requirements  
10 were.

11          Q.    What did you understand integrity testing  
12 to be?

13          A.    For leaks.

14          Q.    You weren't aware of any requirements  
15 that underground storage tanks be tested for that  
16 purpose?

17          A.    I knew you were supposed to check for  
18 leaks, but I assumed that our Chevron dealer --  
19 that was his responsibility. So that is why I  
20 wasn't concerned because I figured if there was a  
21 problem that they would let us know. That was  
22 their full responsibility to inform us of any  
23 problems with those tanks, water, leakage,  
24 whatever.

25          Q.    Going back to 1975 when you and your



1 in, right. We call it the filler.

2 Q. This filler is located in the driveway at  
3 Harrison Street; right?

4 A. Well, there are two, right, 1 and 2 are  
5 in the driveway.

6 Q. Does this help you recall whether  
7 subsequent to 1975 at any time any repairs were  
8 made to either of the fill ports at Harrison Street  
9 to prevent water infiltration?

10 A. I don't recall any, Randy.

11 Q. Between 1982 when the tank was replaced  
12 at Harrison Street and your retirement some five  
13 years later, did it come to your attention at any  
14 time, Ron, that there were some new regulations  
15 passed by the state regarding underground storage  
16 tanks?

17 A. New regulations?

18 Q. Yes.

19 A. In regards to what?

20 Q. In relation to the storage and the  
21 operation of underground storage tanks. I am  
22 leaving aside the vapor recovery -- new regulations  
23 in addition to the vapor recovery requirements --

24 A. I didn't know of any new regulations. I  
25 personally did not read most of the correspondence

1 coming through. So if it came through by mail, I  
2 did not -- more than likely I did not read it  
3 because I do not remember any -- we did receive a  
4 lot of correspondence from the Bay Area Quality  
5 Board. I quite frankly didn't read most of it. I  
6 must confess.

7 Q. Do you remember getting any  
8 correspondence at Douglas Motor Service on Webster  
9 Street from other state agencies such as the State  
10 Water Resources Control Board or Alameda County  
11 regarding underground storage tanks?

12 A. Like I said to you, there was a lot of  
13 correspondence from various state boards that I  
14 must confess I did not read most of it. So I  
15 wasn't aware of it. I wasn't even concerned about  
16 it.

17 Q. I think you told me yesterday that no one  
18 person among the Douglas partners was designated to  
19 take the lead and keep up on all of those  
20 developments?

21 A. Correct.

22 Q. Were you aware at any time between 1982  
23 when the tank was replaced and your retirement that  
24 there were new requirements for monitoring  
25 underground storage tanks?

1           A.    I was not aware of that.

2           Q.    Were you aware of any requirements for  
3 testing of underground storage tanks for integrity;  
4 in other words, to see if the tank was intact?

5           A.    I was aware of the testing for  
6 integrity.

7           Q.    My question was, were you aware of any  
8 requirements for testing for integrity?

9           A.    No, I didn't know what the requirements  
10 were.

11          Q.    What did you understand integrity testing  
12 to be?

13          A.    For leaks.

14          Q.    You weren't aware of any requirements  
15 that underground storage tanks be tested for that  
16 purpose?

17          A.    I knew you were supposed to check for  
18 leaks, but I assumed that our Chevron dealer --  
19 that was his responsibility. So that is why I  
20 wasn't concerned because I figured if there was a  
21 problem that they would let us know. That was  
22 their full responsibility to inform us of any  
23 problems with those tanks, water, leakage,  
24 whatever.

25          Q.    Going back to 1975 when you and your

1 described in the index marked  
2 for identification as Defendants'  
3 Exhibit No. 15)

4 MR. DRUMMOND: Q. What is Exhibit 15, sir?

5 A. It is an agreement between Standard Oil  
6 and my father, Sanford Douglas, outlining, I guess,  
7 the conditions under which they will supply us with  
8 gas, and I guess that is all.

9 Q. Is that the -- is this the supply  
10 contract that existed with Standard Oil until you  
11 left the premises?

12 A. I don't know. They weren't very good at  
13 updating their agreement.

14 Q. Did either Standard Oil or the  
15 distributor to you -- I forgot, Bay Marketing or  
16 whatever it was --

17 A. Bay Cities Oil.

18 Q. Did they commencing about 1984-1985 start  
19 supplying Douglas with information about federal or  
20 state requirements for operators of gas stations?

21 A. I don't think so, no. We may have gotten  
22 some -- we probably got something from Standard  
23 Oil. I can recall from time to time there were  
24 things from Standard Oil. I don't think we got  
25 anything from Bay City Oil Marketeers.

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1 Q. Did Standard tell you things like what  
2 the federal laws were with respect to operating gas  
3 stations?

4 A. I don't recall that they did that. I  
5 wouldn't be surprised if they did, but I don't  
6 recall it, and if they did, they were hard to  
7 understand.

8 Q. Do you have a recollection that the  
9 regulatory requirements, either state or federal,  
10 became more burdensome in '84, '85' ,86, in that  
11 time frame?

12 A. No question about that.

13 Q. Can you describe some of the new burdens  
14 that you had?

15 A. The vapor recovery bit was one of it, the  
16 removal of the gas tank. That feature may have  
17 been in for some time. I am not sure, but at least  
18 it was reiterated in this interim period. There  
19 was -- and I don't recall whether I ever even  
20 received any document to this effect, but I knew  
21 something about the gas tanks had to be tested for  
22 leaks and I don't recall whether -- it certainly  
23 may have been included in some of the documentation  
24 that we may have received from Standard Oil, but I  
25 don't recall, but I know somewhere, of course, I

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1 picked up the fact that these things had to be  
2 tested.

3 Q. Up through the time that you vacated the  
4 premises there at Harrison Street garage, did you  
5 talk to Mr. Bacharach or Mr. Borsuk about all these  
6 new requirements that the government was coming  
7 down with?

8 A. No.

9 Q. Did you suggest to them at all that they  
10 should become familiar with them?

11 A. No.

12 Q. Or learn about them?

13 A. No.

14 Q. Did they ever indicate to you that they  
15 had learned about them and were taking steps to  
16 learn more about them?

17 A. No.

18 Q. They never suggested that you ought to  
19 learn more about them?

20 A. No.

21 Q. Is it possible that back in your storage  
22 files that you might have a file on materials that  
23 you received in this time frame from Standard Oil?

24 A. No.

25 Q. No?

1 Q. Yesterday you told us periodically you  
2 would get notices from the county of Alameda to do  
3 things in connection with the gasoline tanks  
4 periodically.

5 MR. MORRISON: Objection. I think that  
6 misstates his testimony. I think it was broader. I  
7 think he said he got notices from different  
8 government agencies, not limiting it to Alameda  
9 County.

10 MR. TRINKLE: I'd agree with that statement.

11 MR. DRUMMOND: Mr. Morrison is absolutely  
12 correct, and I stand corrected. My question is:

13 Q. Did you ever forward any of those notices  
14 on to Mr. Bacharach?

15 A. I don't believe so.

16 Q. Did you ever tell him that, as the owner  
17 of the property, it was his obligation to deal with  
18 those notices from the governmental agencies?

19 A. No. I wouldn't have told them that,  
20 because it was -- the only notices that we would  
21 have gotten would be to get permits and licenses and  
22 things of that sort for the tanks, which I was aware  
23 of. I didn't feel that was the obligation of Mr.  
24 Bacharach, I thought it was the obligation of  
25 ourselves.

1 Q. Because you were operating the property?

2 A. Because we were operating. We got a  
3 license to park cars, license to sell gas, and so  
4 that was our obligation, not his.

5 MR. DRUMMOND: All right. Let's take a break  
6 at this time for ten minutes and take a look at the  
7 materials that Mr. Douglas has given us.

8 MR. SIMKINS: It's 1:25 and we are off the  
9 record.

10 (Brief recess)

11 MR. SIMKINS: The time is 1:43 and we are  
12 back on the record.

13 MR. DRUMMOND: Ms. Reporter, I am going to ask  
14 you to mark as a group exhibit the entirety of a  
15 manila folder with pages inside entitled "Storage  
16 Tanks - HK. . ."

17 A. HG.

18 MR. DRUMMOND: ". . . HG&DMS"?

19 A. Right.

20 MR. DRUMMOND: All right. And would you mark  
21 that as exhibit next, please?

22 MR. TRINKLE: Just so the record is clear, I  
23 have no objection to it being marked, but the  
24 original of that will have to come back to our  
25 office.



1 mean as far as accounts payable?

2 Q. I mean in terms of keeping the records.

3 A. Yes. She did have responsibility of -- I  
4 don't know her exact responsibilities. I can't go  
5 into detail because I wasn't really -- I don't know  
6 what her responsibilities were as far as  
7 maintaining those, what you say, records. I just  
8 have no idea.

9 Q. During the time that you were with  
10 Douglas, do you remember, Ron, ever getting any  
11 information from Chevron about government  
12 regulations pertaining to underground storage  
13 tanks?

14 A. Government regulations, are you talking  
15 about EPA?

16 Q. EPA or state or county, but having to do  
17 with regulating underground storage tanks.

18 A. Not to my knowledge. It is possible, but  
19 I didn't read everything that came in through the  
20 mail. It is possible, but to the best of my  
21 knowledge, I knew about things like this through  
22 reading the paper, but as far as getting  
23 information from the Chevron people, I don't know.

24 Q. Do you remember getting any information  
25 about underground storage tank regulations from Bay

1 City?

2 A. I don't remember.

3 Q. Do you remember getting any information  
4 from the government agencies themselves, for  
5 example, EPA or the State Water Resources Control  
6 Board?

7 A. Overall, probably. I don't know. I  
8 probably got information. I mean, I could see it  
9 coming in the mail, but I quite frankly didn't read  
10 it. You don't read all your mail. I throw away a  
11 lot of mail at home. As soon as I see the title, I  
12 just throw it in the garbage can. I can't tell  
13 you. It may have come in through the mail, but I  
14 do not recall reading it and memorizing it and  
15 really getting down to the facts. I just don't  
16 think I did.

17 Q. During your years with Douglas, was there  
18 any discussion about designating one of the  
19 partners to take the lead role in keeping up with  
20 regulations on underground storage tanks?

21 A. No, nothing in that respect.

22 MR. MORRISON: Please mark this as an  
23 exhibit.

24 (Document more particularly  
25 described in the index marked

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1       answering it.

2           A.    There are many regulations that have come  
3       out for a period of time.

4           Q.    Right.

5           A.    A number of years ago, there was a large  
6       volume of regulations that came out pertaining to  
7       the price, the pricing of gas, how we could price  
8       it. We kept a file on that for some time until the  
9       issue evaporated and then we threw it away.  
10       Frankly, it was very confusing.

11           This file here that you have pertains to the  
12       storage tanks and the permitting, generally was  
13       handled by my brother. I was usually aware of what  
14       was going on, but in terms of making the phone calls  
15       and the letters, that was probably my brother.

16           Q.    All right. For example, I am just opening  
17       the file at random. Here's a piece of paper or a  
18       letter or something on the letterhead of a company  
19       called R. W. Williams, Inc., Certified Tank Testing.  
20       Seems to have been signed by James D. Williams,  
21       director of operations.

22           Have you ever seen this document before?

23           A.    Yes. Saw it this morning.

24           Q.    Pardon me?

25           A.    I saw it this morning.

1 Q. All right. But before today.

2 A. I probably saw it, yes.

3 Q. All right. And this letter generally  
4 talks about having tanks tested and they are  
5 offering their services to do that.

6 Do you know whether Douglas ever contacted the  
7 Williams company?

8 A. No.

9 Q. Did you get lots of these kinds of  
10 brochures --

11 A. Yes.

12 Q. -- over time?

13 A. Yes.

14 Q. And is it your recollection that, at some  
15 time, the testing of tanks for leaks became a  
16 significant issue?

17 MR. MORRISON: Ambiguous.

18 MR. DRUMMOND: Go ahead.

19 A. You say became a significant --

20 MR. DRUMMOND: Yes.

21 A. That would be my perception, yes, it  
22 became a significant issue.

23 When the law first came out, I don't even know  
24 when that happened, it began to evolve into more --  
25 frankly, as they have stated, confusing issues.

1 Street, 98th Avenue which is the airport facility.  
2 You mentioned Latham Square.

3 A. Right.

4 Q. Can you think of any other facilities  
5 that involved --

6 A. I don't recall. I don't believe so.

7 MR. TRINKLE: Of course, Harrison too.

8 A. That goes without saying, right.

9 MR. MORRISON: Q. No others come to mind?

10 A. They don't come to mind right now, no.

11 Q. Did you have, for example, any facilities  
12 in Berkeley that sold gasoline?

13 A. Not that I recall.

14 Q. Of these facilities that we talked about,  
15 which ones offered any auto repair or auto  
16 servicing?

17 A. Are you referring to the locations we  
18 were just talking about?

19 Q. Let's start with Webster Street.

20 A. We had repairs there.

21 Q. As to Webster Street and the repairs,  
22 were these repairs performed by Douglas employees?

23 A. By our employees.

24 Q. What types of repairs at Webster?

25 A. Everything, anything pertaining to

1 automobile repairs.

2 Q. Give me some examples of the types of  
3 work that was performed.

4 A. Tune-ups, brakes, lubrications, mufflers,  
5 complete motor overhauls.

6 Q. Transmission work?

7 A. Yes, also body work, transmission work,  
8 not really transmission work, but that is all  
9 right.

10 Q. What I meant by transmission work is  
11 transmission overhauls, rebuilds.

12 A. No, we are not going to pull that out.  
13 We did sublet it, but anyway.

14 Q. Did you sublet it on the premises or  
15 somewhere else?

16 A. Out, but that is another subject. You  
17 don't want to get into that.

18 Q. When you say motor overhauls, did you  
19 pull engines?

20 A. Yes.

21 Q. You did routine auto servicing as well  
22 there?

23 A. Yes.

24 Q. Check brake fluids and change oil?

25 A. That is all part of the service work.

1 Q. That is Webster Street. What types of  
2 auto servicing or repair operations did you have on  
3 13th Street, if any?

4 A. Actually, I think all we had there was --  
5 I don't think we did any kind of repairs there. I  
6 don't think anything was done there for repairs or  
7 servicing.

8 Q. No servicing either?

9 A. I don't believe so. I don't think we  
10 even had a lift there, although I could be wrong.  
11 I am not sure.

12 Q. You did have a lift or lifts at Webster  
13 Street?

14 A. Oh, we had four lifts there.

15 Q. As best you can recall, during what  
16 period of time did Douglas perform auto repairs and  
17 servicing at Webster Street?

18 A. During what period of time?

19 Q. Right.

20 A. From the time I was there until the time  
21 I left.

22 Q. So 1953 to 1987, that service was  
23 offered?

24 A. We had all that service there while I was  
25 there.

1 Q. Let's go to the 11th Street facility  
2 now. Was any type of auto servicing or repair  
3 offered there?

4 A. Yes, we did do repairs there, but only  
5 minor, nothing major, all minor stuff.

6 Q. What would you describe as minor repairs?

7 A. Lubrications, oil changes, possibly  
8 tune-ups. Everything else we would sublet.

9 Q. Again, when you say sublet, do you mean  
10 off site?

11 A. If someone wanted a transmission  
12 overhaul, we would send it up to Homage  
13 Hydromatics (phonetic).

14 Q. In other words, you don't remember the  
15 name of the place?

16 A. I don't remember the name, but it doesn't  
17 make any difference.

18 Q. It sounds like your operation at 11th  
19 Street offered what we might call auto servicing,  
20 not really repairs?

21 A. It was like a convenience stop.

22 Q. Did you do lube jobs there?

23 A. Yes.

24 Q. On 98th Avenue, did you do any servicing?

25 A. No repairs. They didn't have a lift.



1 Q. Did you do any repairs at Latham Center?

2 A. Yes, Latham Square garage.

3 Q. What types of repairs at Latham?

4 A. Basically whatever they wanted, we would  
5 take care of it one way or another.

6 Q. It was like Webster Street in the sense  
7 you offered full service?

8 A. If we couldn't do it there, we would send  
9 it out and have it done.

10 Q. So you would do mufflers. You did  
11 tune-ups, lube jobs, oil changes?

12 A. Right.

13 Q. Any body repairs?

14 A. Yes, we had a body shop there too on  
15 Webster Street.

16 Q. I meant at Latham.

17 A. Oh, no. Excuse me. Nothing at Latham.  
18 I am sorry.

19 Q. Were the auto repairs that were offered  
20 at Latham performed by Douglas employees?

21 A. Yes.

22 Q. To the extent you offered minor repairs  
23 or servicing at 11th Street, was that work also  
24 performed by Douglas employees?

25 A. Yes.

1 Q. At any of these facilities we have talked  
2 about so far, Mr. Douglas, in addition to the work  
3 performed by Douglas employees for servicing  
4 cars --

5 A. Excuse me. I was thinking of something  
6 else. Do you have any water?

7 MR. MORRISON: Why don't we take five  
8 minutes?

9 (Recess taken from 10:25 to 10:35)

10 MR. MORRISON: Back on the record.

11 Q. Mr. Douglas, before we took our break, I  
12 was asking you about repairs.

13 A. Could you call me Ron?

14 Q. Sure.

15 A. Thank you. I appreciate it.

16 Q. Before we took our break, I asked you  
17 about repairs on autos that were performed by  
18 Douglas employees.

19 A. Yes.

20 Q. Leaving aside the work that was done by  
21 Douglas employees, at any of the facilities that we  
22 just talked about, Webster Street, 13th, 11th,  
23 98th, Latham, leading aside Harrison for the  
24 moment, did you have any subtenants who also  
25 performed auto servicing or repairs?

1           A.    Subtenants?

2           Q.    Let's start with Webster.

3           A.    You mean a subcontractor?

4           Q.    Let's take one at a time.  You owned the  
5 Webster Street property?

6           A.    Yes.

7           Q.    Did you have any tenants or subtenants  
8 who performed auto repairs or servicing at Webster?

9           A.    No.

10          Q.    At 13th Street, did you have any tenants  
11 or subtenants --

12          A.    I don't think we did any service work  
13 there on 13th Street.  I don't believe we did on  
14 13th Street at all.

15          Q.    At 11th Street, did you have any tenants  
16 or subtenants who performed auto servicing?

17          A.    No.

18          Q.    How about at Latham Square?

19          A.    No.

20          Q.    You did have subtenants at Harrison  
21 Street who performed various types of auto work,  
22 didn't you?

23          A.    Say that again.

24          Q.    At the Harrison Street Garage, during the  
25 time that Douglas had the lease for the garage



OAKLAND REALTY & INVESTMENT CO.

2875 PARK BOULEVARD
OAKLAND, CALIFORNIA 94610
TELEPHONE 444-7770

OAKLAND REAL ESTATE 09400

STANDARD FORM LEASE

THIS LEASE made this 20th day of AUGUST 1972 between

ALVIN H. BUCHANAN and MARCABA JEAN BOSSUY

and DOUGLAS MOORE SERVICE, a partnership as "Lessor,"

For and in consideration of the rents, covenants and agreements hereinafter agreed by Lessee to be paid, kept and performed, Lessor leases unto Lessee and Lessee hires from Lessor the following described premises, together with appurtenances, situated in the City of Oakland County of Alameda State of California:

That certain real property more commonly known as 1434 Harrison Street and 1439 Alice Street comprising approximately 68,000 square feet. Said premises specifically excludes 1428 Harrison Street (1,900 square feet) and 1441-43 Alice Street (4600 square feet)

Said hiring and letting is upon the following terms and conditions:

1. TERM: POSSESSION, and option for five years as below described

(a) The term of this lease shall be for a period of two (2) years commencing on the 1st day of September 1972 and ending on the last day of August 1974

(b) Lessee agrees that in the event of the inability of Lessor to deliver possession of the premises at the commencement of the term as hereinbefore specified, Lessor shall not be liable for any damage caused thereby nor shall this lease be void or voidable but Lessee shall not be liable for rent until such time as Lessor offers to deliver possession of the premises to Lessee, but the term hereof shall not be extended by such delay. If Lessee, with Lessor's consent, takes possession prior to the commencement of the term, Lessee shall do so subject to all of the covenants and conditions hereof and shall pay rent for the period ending with the commencement of the term at the same rental as that prescribed for the first month of the term, prorated at the rate of 1/30th thereof per day.

2. RENTAL: As rental for the demised premises Lessee hereby agrees to pay to Lessor without deduction, set-off, prior notice or demand, the sum of Twenty-six Hundred Dollars (\$2,600.00),

per month in advance on the 1st day of September 1972, and continuing throughout the balance of the term. Monthly rental for any partial month shall be prorated at the rate of 1/30th of monthly rent per day. Rent shall be paid to Lessor at c/o Alvin H. Buchanan, 77 Jack London Square, Oakland, Ca. 94607 or at such other place or places as Lessor may from time to time direct.

In consideration of Lessor executing this lease, Lessee hereby agrees to pay Lessor the sum of \$2,600.00 receipt of which is hereby acknowledged. Lessee agrees that \$2,600.00 of said sum shall be applied as the rental due for the first month of the term hereof. Lessee further agrees that if, at the time, Lessee is not in default of any of the terms, covenants and conditions contained herein, the sum of \$ none constituting a security deposit, shall be repaid to Lessee upon termination of this lease or any extension thereof.

3. USE: The premises are hereby leased to Lessee upon the express condition that Lessee shall use said premises for parking garage, auto repair shop, auto service center.

and for no other purpose without the written consent of Lessor first obtained.

Lessee agrees that the said Lessee's business shall be established and conducted throughout the term hereof in a first class manner; that Lessee will not use the demised premises for, or carry on or permit upon said premises any offensive, noisy or dangerous trade, business, manufacture or occupation of any nature, or anything against public policy, nor permit any auction sale to be held or conducted on or about said premises; that Lessee shall not commit, or suffer to be committed, any waste upon the premises; that Lessee will not do or suffer anything to be done upon said premises which will cause structural injury to said premises or the building of which same form a part; that said premises will not be overlanded and that no machinery, apparatus or other appliance shall be used or operated in or upon the demised premises which will in any manner injure, vibrate or shake said premises or the building of which it is a part; that no use will be made of the demised premises which will in any way impair the efficient operation of the sprinkler system (if any) within the building containing the demised premises; that Lessee will not leave the said premises unoccupied or vacant during the term hereof; and that without the

Handwritten initials and date: BHB, 2/1/72

Handwritten initials and date: BHB, 2/1/72

PLF/DEPT EXHIBIT 52
WIT: R. Douglas
DATE: 2/1/72
PEERY TSUNIMOTO REPORTER

9. **HOLD HARMLESS.** This lease is made upon the express condition that Lessee agrees to hold Lessor free from liability penalties, losses, damages, costs, expenses, claims of action or claims and/or judgments arising from any injury or damage to any person or persons, including without limitation Lessee, its servants, agents and employees, or property of any kind whatsoever and to whomsoever belonging, including without limitation Lessee's servants, agents and employees, from any cause or causes whatsoever, including negligence, which in, upon or in any way connected with said demised premises, or its appurtenances, or the sidewalks adjacent thereto, during the term of the lease or any necessary hereunder. Lessee hereby covenants and agreeing to indemnify protect and save Lessor harmless from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses however occurring.

Lessee, as a material part of the consideration to be rendered to Lessor hereby waives all claims against Lessor for damages to goods, wares and merchandises in, upon or about said premises and for injuries to Lessee, its agents or other persons in or about said premises from any cause arising at any time, including, without limiting the generality of the foregoing, damages arising from acts or omissions of other tenants of the building of which the demised premises are a part and from the failure of either party to make repairs.

10. **INSURANCE.** Lessee further agrees to take out and keep in force during the life hereof at Lessee's expense public liability and other insurance in companies acceptable to Lessor to protect against any liability to the public, whether to persons or property, accident to the use of or resulting from an accident occurring in or about said premises, the sidewalks adjacent thereto and such other areas which Lessee, its officers, servants, agents, employees, contractors and invitees shall have the right to use under the terms hereof during the term of this lease or any co-tenancy hereunder, in the amount of \$2,500,000.00 indemnity against the claim of one person and \$500,000.00 against the claims of two or more persons in any one occurrence and property damage insurance in an amount of not less than \$50,000.00 per occurrence. The said policies shall also insure the contingent liability of Lessor. Lessee further agrees, during the term hereof, to carry full coverage plate glass insurance on said demised premises in the joint names of Lessor and Lessee, and to pay the premiums therefor.

Lessee agrees that every insurer shall agree by endorsement upon the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give Lessor ten (10) days written notice at the address where rental is paid before the policies in question shall be altered or cancelled. Either the originals or certified copies of said policies or a remittance of insurance shall be placed with or furnished Lessor.

11. **WAIVER OF SUBROGATION.** Lessor hereby releases Lessee, and Lessee hereby releases Lessor, and their respective officers, agents, employees and servants, from any and all claims or demands for damages, loss, expense or injury to the demised premises, or to the furnishings and fixtures and equipment, or inventory or other property of either Lessor or Lessee in, about or upon the demised premises, as the case may be, which be caused by or result from perils, events or happenings which are the subject of insurance carried by the respective parties and in force at the time of any such loss, provided, however that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby or the expense of such insurance is not thereby increased.

12. **TAXES.** Lessee shall be liable for all taxes levied against personal property and trade fixtures on or about the demised premises, including, but without prejudice to the generality of the foregoing, shelves, counters, vaults, vault doors, safes, partitions, fixtures, machinery, printing process, plant equipment and atmospheric coolers, and if any such taxes on Lessee's personal property or trade fixtures are levied against Lessor or Lessor's property, and if Lessor pays the same, which Lessor shall have the right to do regardless of the validity of such levy, or if the assessed value of Lessor's premises is increased by the inclusion therein of a value placed on such property of Lessee and if Lessor pays the taxes based on such increased assessment, which Lessor shall have the right to do, regardless of the validity thereof, Lessee, upon demand shall, as the case may be, repay to Lessor the taxes so levied against Lessor, or the proportion of such taxes resulting from such increase in the assessment.

In addition to the rental herein provided for and during the term hereof, Lessee agrees to pay 90% of any increase in real property taxes and special assessments levied or assessed against the building of which the demised premises are a part and the land upon which said building is located and appurtenances thereto, over and above those real property taxes and assessments levied or assessed against said premises and appurtenances for the fiscal tax year (of the government agency levying said property taxes) in which the term hereof commences (or, if the foregoing percentage has not been specified, then that portion of any such increase as the total net rentable area within the demised premises bears to the total net rentable area within the building or buildings, including the demised premises, which are included in the unit so taxed or assessed by said taxing authorities). The amounts provided for in this paragraph shall be paid by Lessee within ten (10) days after written notice thereof from Lessor.

13. ~~Should Lessee fail to pay the rental herein reserved, or any part thereof, or any other sum required by Lessee to be paid to the Lessor at the times or in the manner herein provided; or~~

~~(b) If Lessee shall abandon or vacate said premises or violate the provisions of paragraph 8(b) hereof;~~

~~(c) If default should be made in any of the other covenants or conditions on Lessee's part herein contained, and not be cured within ten (10) days after written notice by Lessor or Lessor's agent to Lessee of such default, such default, breach or act shall give Lessor, or Lessor's agent and representatives, with or without terminating this lease, the right to re-enter the demised premises or any part thereof, either with or without process of law, and expel, remove and put out Lessee or any person or persons occupying said premises and remove all personal property therefrom, using such force as may be necessary to again repossess and enjoy said premises as before the default, without prejudice to any remedy which might otherwise be used for arrears of rent or providing breach of covenant or condition, and without liability to any person for damages sustained by reason of such removal. No such re-entry or taking of possession of said premises by Lessor shall be construed as an election on his part to terminate this lease unless a written notice of such intention be given Lessee, said notice being given as provided herein. Lessor may likewise, at Lessor's option, but at the cost of Lessee and in addition to any other remedy which Lessor may have upon such default or failure or neglect and without notice to Lessee, petition the Superior Court of the State of California to and be entitled as a matter of right to the appointment of a Receiver and said Court may appoint such Receiver and in him such powers and authority as may be necessary or proper to fully protect all the rights herein granted or reserved to Lessor.~~

~~Lessor may likewise, at Lessor's option and in addition to any other remedies which Lessor may have upon such default, failure or neglect, lawfully relet said premises in whole or in part, altering, changing or subdividing the same as in its unqualified judgment may accomplish the best results at such rental and upon such terms and for such length of time, whether less or greater than the unexpired portion of the term of this lease, as Lessor may see fit, and Lessee shall be liable unto Lessor for any deficiency between the rentals so procured by Lessor for the period of such letting or reletting, not to exceed, however, the amount of the original rental reserved hereunder.~~

~~... shall be held liable for the cost of such deficiency...  
 ... shall be held liable for the cost of such deficiency...  
 ... shall be held liable for the cost of such deficiency...~~

*Handwritten initials: BJB, FRC, JLN*

**14. ABANDONMENT.** If Lessee should abandon, vacate or surrender said premises or be held responsible in any way in addition to all other remedies of Lessor, Lessor at its option may deem that any personal property belonging to Lessor on the premises is abandoned and Lessor may at once enter upon said premises and remove therefrom all and any personal fixtures and merchandise thereon and may sell said fixtures, equipment and merchandise at public or private sale as Lessor may deem proper and upon such terms as Lessor may determine, without notice to or demand upon Lessee. Out of the proceeds of such sale Lessor may reimburse itself for the expense of such taking, removal and sale and for any indebtedness of Lessee in relation to the premises and the surplus, if any, shall be accounted for to Lessee.

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**15. DESTRUCTION; RENEWAL.** (a) In the event of damage or destruction of the demised premises during the term hereof from fire, earthquake, act of God or the elements, Lessor shall forthwith repair the same, provided such repairs may be made within ~~thirty~~ **thirty** days under the laws and regulations of State, Federal, County or Municipal authorities, but such destruction shall in no case annul or void this lease, except that Lessee shall be entitled to a proportionate deduction of the monthly rental while such repairs are being made, such proportionate deduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in said premises. If such repairs cannot be made in ~~thirty~~ **thirty** days, Lessor may, at its option, make same within a reasonable time, in which event this lease shall continue in full force and effect and the monthly rental shall be proportionately abated as set forth in the paragraph provided. In the event that Lessee does not elect to make such repairs which cannot be made ~~within thirty~~ **within thirty** days or such repairs cannot be made under the laws and regulations, this lease may be terminated at the option of either party.

*Handwritten initials: BJB, JLN*

In respect to any damage or destruction which Lessor is obligated to repair or may elect to repair under the terms of this paragraph, the provisions of Section 1932, Subdivision 2 and of Section 1933, Subdivision 4 of the Civil Code of the State of California are waived by Lessee. In the event that the building in which the demised premises may be situated be damaged or destroyed to the extent of not less than 25% of the replacement cost thereof, Lessor may elect to terminate this lease, whether the demised premises be injured or not.

Should the parties hereto be unable to agree in writing as to the time required for repair of any such damage or destruction to the demised premises or as to the percentage of damage to the building of which the same are a part, within five (5) days after the happening of said occurrence, or to the extent, if any, of reduction of rental during the period of repair within fifteen (15) days after the happening of said occurrence, each shall within five (5) days following written notice from either party to such effect, provided such party is not in default of this lease at such time, select an arbitrator and notify in writing the other of the name and address of the arbitrator so selected. Within five (5) days thereafter the two so selected shall appoint a third arbitrator and notify in writing within said last mentioned time the Lessor and Lessee of the name and address of said appointee, or of their inability to agree upon said appointee, if such should be the fact. In the latter event the selection of the third arbitrator shall be committed to the Presiding Judge of the Superior Court of the State of California, of the County in which the demised premises are located, and such appointment shall be invoked by written request addressed to said Judge signed by Lessor or his Lessee, or their respective counsel, within five (5) days after receipt by the Lessor and Lessee of said notice of inability to select two arbitrators. The appointee of said Presiding Judge shall be accepted by said two arbitrators and Lessor and Lessee. When the three arbitrators have been selected in either of the ways above set forth, they shall forthwith convene and determine the issue or issues submitted unto them, and the written determination under the signatures of a majority of said arbitrators shall be final, binding and conclusive upon the parties hereto. Should either party refuse or fail to select an arbitrator within the time as above provided and notify the other party thereof, the arbitrator selected by such other party shall be the sole arbitrator and his decision shall have the same effect as if rendered by a majority of three arbitrators. Save as modified hereby, the provisions of Title IX of Part III of the Code of Civil Procedure of the State of California dealing with the subject of arbitration, shall apply. The costs of any arbitration shall be borne equally by the parties except in the instance of refusal of a party to abide thereby, in which event, and should the award be confirmed by judicial order in conformity with the said provisions of said Title, all costs, including those incurred in the court proceeding, shall be assessed against and borne by the disaffirming party.

(b) Notwithstanding anything herein to the contrary, if, at any time during the term hereof, any governmental agency having jurisdiction over the premises demised or the building of which the said premises are a part shall require the making of any repairs, improvements or alterations to said building or premises and Lessor determines to demolish said building or premises rather than to make said repairs, improvements or alterations, or allow same to be made, Lessor, upon at least thirty (30) days written notice to Lessee shall have the right to terminate this lease. Upon the date specified in such notice, the term shall terminate and Lessee shall have no further liability to Lessor except that: (i) Lessor shall refund to Lessee any unearned rentals and shall return any security deposit, and (ii) in the event Lessor had theretofore given written consent to any leasehold improvements upon the premises made by Lessee and had agreed, in writing, as to the cost thereof to Lessee, Lessee shall pay to Lessor upon such termination that percentage of such cost to Lessee as the number of full calendar months remaining in the original term of this lease bears to the total number of calendar months in said original term.

**16. COSTS OF SUIT.** Lessee agrees that if Lessor is involuntarily made a party defendant to any litigation concerning this lease or the demised premises or the premises of which the demised premises are a part by reason of any act or omission of Lessee and not because of any act or omission of Lessor, then Lessee shall hold harmless the Lessor from all liability by reason thereof including reasonable attorneys fees incurred by Lessor in such litigation and all taxable court costs. If legal action shall be brought by either of the parties hereto for the unlawful detainer of the premises, for the recovery of any rent due under the provisions of this lease, or because of the breach of any term, covenant or provision hereof, the party prevailing in said action (Lessor or Lessee as the case may be) shall be entitled to recover from the party not prevailing costs of suit and a reasonable attorney's fee which shall be fixed by the Judge of the Court.

**17. HOLDING OVER.** Should Lessee hold over the term hereby created with the consent of Lessor, Lessee shall become a tenant from month to month at the monthly rental payable hereunder for the prior six (6) months, and otherwise upon the covenants and conditions in this lease contained, and shall continue as such tenant until thirty (30) days after other party hereto serves upon the other written notice of intention to terminate such monthly tenancy. Should such termination occur on any day other than the last day of any rental month, any unearned prepaid rental shall, immediately following surrender of the demised premises by Lessee, be refunded unto him.

18. **SALVAGE OF PREMISES.** In the event of a sale or conveyance by Lessor of the building containing the demised premises or assignment of the Senior Lease (if any), the same shall operate to release Lessor from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of Lessee and in such event Lessee agrees to release to the responsibility of the successor in interest of Lessor. If any security be given by Lessee to secure performance of Lessor's covenants in this lease, Lessor may transfer the security, as such, to the purchaser of the premises and thereafter Lessor shall be discharged from any further liability in reference thereto.

19. **APPOINTMENT OF RECEIVER.** In the event a receiver be appointed at the instance of Lessor in any action against Lessee, the receiver may take possession of any personal property belonging to Lessee and used in the conduct of the business of Lessee being carried on in said premises and Lessee agrees that the entry or possession by said receiver of the premises shall be an eviction of Lessee from the demised premises or any portion thereof, and Lessee hereby agrees to indemnify and hold Lessor harmless from any claim of any character by any person arising out of or connected with the entry by said receiver and taking possession of the demised premises or said personal property. Neither the application for the appointment of such receiver nor the appointment of such receiver, shall be construed as an eviction of Lessee's part to terminate this lease unless a written notice of such intention is given by Lessor to Lessee.

20. **CONDEMNATION.** If any part of the demised premises or of the building of which same are a part shall be taken or any of the premises be taken) be condemned for a public or quasi-public use by right of eminent domain, or shall be taken or transferred by agreement in connection with such public or quasi-public use, this lease as to the part so taken shall terminate as of the date title shall vest in the condemner, and the rent payable hereunder shall be adjusted to the date of condemnation to pay for the remainder of the term only such portion of such rent as the value of the part remaining after the condemnation bears to the value of the entire premises at the date of condemnation, but in either such event Lessor shall have the option to terminate this lease as of the date when title to the part so condemned vests in the condemner.

All compensation awarded upon such condemnation or taking shall belong and be paid to Lessor and Lessee shall have no claim thereto, and Lessee hereby irrevocably assigns and transfers to Lessor any right to compensation or damages which in Lessee may become entitled during the term hereof by reason of the condemnation of all or a part of the demised premises.

21. **SENIOR LEASE.** Lessee agrees that in the event Lessor holds the demised premises or the premises on the building of which the demised premises are a part by virtue of any lease or tenancy (herein referred to as the "Senior Lease"), Lessee will not suffer any act or omission on the premises which will violate any of the terms and conditions of the said Senior Lease. Lessee hereby admitting knowledge of and familiarity with the terms and conditions of the said Senior Lease. In the event the Senior Lease is terminated for any cause then this lease at Lessor's option shall forthwith terminate and Lessor shall not be under any responsibility or liability therefor to Lessee.

22. **SUBORDINATION.** Notwithstanding anything herein to the contrary, Lessee agrees that this lease is and shall be subordinate to any mortgage, deed of trust or other instrument of security which have been or shall be placed on the land and building or land or building of which the demised premises form a part, and such subordination is hereby made effective without any further act by Lessee. Lessee agrees that at any time or from time to time upon request by Lessor to execute and deliver any instruments, releases or other documents that may be required in connection with subjecting and subordinating this lease to the lien of said mortgage, deed of trust or other instrument of security, Lessor hereby appoints Lessee as Lessor's attorney in fact, irrevocably, to execute and deliver any such instruments.

23. **SIGNS.** Lessor reserves the right to the use of the exterior walls and the roof of the demised premises and of the building of which the demised premises are a part. Lessee agrees not to inscribe, paint or affix any signs, advertisements, placards or writings on the exterior or roof of the demised premises or upon the entrance doors, windows, or the sidewalk on or adjacent to the demised premises without the written consent of Lessor first obtained. Any signs so placed on the premises shall be so placed upon the understanding and agreement that Lessor will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Lessee then Lessor may have same so removed at Lessee's expense. Lessee shall not be allowed to use the name of the building in which the demised premises are located, or of the owner of such building, or words to such effect in connection with any business carried on in said premises (except as the address of the Lessee) without the written consent of Lessor. Lessor reserves the right to change the name and title of the building at any time during the term of said lease. Lessee hereby expressly agrees to such change at the option of Lessor and waives any and all damage occasioned thereby.

24. **SURRENDER OF LEASE.** No act or conduct of Lessee, whether consisting of the acceptance of the keys to the demised premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the demised premises by Lessee prior to the expiration of the term hereof, and such acceptance by Lessor of surrender by Lessee shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender by Lessor. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessee, terminate all or any existing subleases or subtenancies, or concessions, or may at the option of Lessor, operate as an assignment to him of any or all such subleases or subtenancies or concessions.

25. **NOTICES.** It is agreed between the parties hereto that any notice required hereunder or by law to be served upon either of the parties shall be in writing and shall be delivered personally upon the other or sent by registered or certified mail, postage prepaid, addressed to the demised premises, in the instance of Lessee, and to the place where usual or principal business is conducted in the instance of Lessor, or to such other address as may be from time to time furnished in writing by Lessee to Lessor or by Lessor to Lessee, each of the parties hereto waiving personal or any other service than that by the means graph provided for. Notice by registered or certified mail shall be deemed to be communicated (not) until the time of mailing.

26. **CUMULATIVE REMEDIES; NON-WAIVER.** The receipt by Lessor of any rent or payments with or without knowledge of the breach of any covenant hereof shall not be deemed a waiver of any such breach and no course of dealing or any course hereunder or any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor. No delay or omission in the exercise of any right or remedy accruing to Lessor upon any breach by Lessee under this lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or hereafter occurring. The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Lessor either hereunder or by law shall be cumulative and not alternative and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law.

17. MISCELLANEOUS. (a) It is agreed by and between the parties hereto that the agreements herein shall be binding upon the parties hereto whether specifically recited herein or not and the same shall be deemed read and construed for the purposes herein containing herein, in the event of breach of any of said agreements, to terminate this lease.

(b) Lessee agrees at any time and from time to time to (10) days of written request from Lessor to execute and deliver to Lessor a statement in writing certifying that the same is untrue, false and stating the modifications and the date in which the rent and other charges have been paid in advance, if any, it being intended that any such statement furnished pursuant to this paragraph may be relied upon by any prospective purchaser, mortgagee or assignee of any part of the premises.

(c) Lessee and Lessee's Guarantor if any agree to deliver to Lessor, within thirty (30) days from written request therefor (but not more frequently than once each calendar year), a true and correct statement prepared and certified by a Public Accountant or Certified Public Accountant showing the true and accurate net worth of Lessee and said Guarantor, if any, as of the close of Lessee's and said Guarantor's last accounting period.

(d) In case there is more than one Lessee the obligation of Lessees executing this lease shall be joint and several. The words "Lessor" and "Lessee" as used herein shall include the plural as well as the singular. The covenants and agreements contained herein shall be binding upon and be enforceable by the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the restrictions herein imposed on assignment by Lessee.

(e) Time is of the essence of this lease and of each and every covenant, condition and provision herein contained.

(f) The paragraph headings of this lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this agreement or any provision thereof or in any way effect this agreement.

Paragraphs 28-35 attached hereto are hereby referred to and incorporated herein.

IN WITNESS WHEREOF, the parties hereto have subscribed their names, and if corporations, executed this lease by officers thereunto duly authorized by resolution of said corporations, in duplicate this day and year first hereinabove written.

LESSOR:

LESSEE:

Alvin H. Bacharach  
 ALVIN H. BACHARACH  
Barbare Jean Borsok  
 BARBARE JEAN BORSOK

DOUGLAS MOTOR SERVICE, a partnership  
Jasper Douglas  
Leland Douglas



28. Lessee acknowledges that Lessor has leased connecting and adjacent premises at 1428 Harrison Street, Oakland, California, to CARL DON SKJOLDAGER (hereinafter referred to as "other tenant"), and that Lessor has agreed that such other tenant shall receive electricity and water in the manner presently supplied to such other tenant, namely, that the same shall be metered through the meters of Lessee herein, and equitably apportioned. In this connection, such other tenant has agreed that such apportionment in the first instance shall be made by Lessee, but if such other tenant feels that the apportionment of the charge, as between the premises of Lessee and the other tenant, is unfair, such other tenant shall be entitled to request that a representative of the Pacific Gas and Electric Company, or the East Bay Water Company, come on to the premises and make a determination of the respective use of the parties, and the determination of the use and the consequent apportionment as so made by such representative shall be binding and conclusive as between Lessee herein and such other tenant; however, even if such apportionment is made, if either Lessee herein or such other tenant thereafter feels that because of change of use the apportionment is no longer accurate, then either Lessee herein or such other tenant may from time to time thereafter request a further determination of the respective use of such utilities, by a representative of Pacific Gas and Electric Company or the East Bay Municipal Utilities District, and, again, such determination shall be binding and conclusive as between Lessee and such other tenant, unless or until a further determination in like manner is so made. Such other tenant has agreed to pay to Lessee herein the proportionate cost of such utilities, with the cost

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determined as above described. Lessee herein agrees to permit the use of such utilities by the other tenant, and agrees to the apportionment of cost, as above described.

29. In addition to the minimum monthly fixed rentals hereinabove agreed to be paid by Lessee, Lessee shall and will pay to Lessor, at the times and in the manner hereinafter specified, an additional rental in the amount equal to forty-five percent (45%) of the amount of Lessee's total revenues derived from use of the premises as a parking garage made during each leasehold year of the term hereof, in, upon or from the demised premises, less the aggregate amount of the minimum monthly fixed rental paid by Lessee during said year.

The term total revenues, as used herein, shall (subject to the exception and authorized deductions as hereinafter set forth) mean the gross amount received by Lessee from use of the premises as a parking garage, both for cash and on credit, and in case of sales on credit whether or not payment be actually made therefor; in this connection, Lessee agrees that its rates of charge for parking and/or storage shall be generally competitive with such charges in the area. Revenues shall not include those received for repairs to motor vehicles made in or upon the demised premises nor for accessories or parts sold therein, nor for sales of gasoline, oil, or fuel for motor vehicles.

Lessee agrees that the primary purpose of the premises, and approximately the same amount of space as is now so used, shall be used for parking automobiles.

There is excepted from Lessee's revenues (as said term is used herein) the amount of all sales tax receipts which

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has to be accounted for by Lessee to any government or governmental agency.

As used herein, the term "leasehold year" shall mean that the first twelve (12) calendar months of the term of this lease (contemplated to be September 1, 1972 - August 31, 1973) and each twelve (12) month period thereafter. Percentage rental for any partial year at the end of the term hereof [if in fact the term does not commence September 1, 1972, under the provisions of Paragraph 1(b)] shall be equitably pro-rated.

Lessee shall keep full, complete and proper books, records, and accounts of the gross revenues (as said term is used herein), both for cash and on credit of each separate department at any time operated in the demised premises; said books, records and accounts, including any sales tax reports that Lessee may be required to furnish to any government or governmental agency, shall at all times be open to the inspection of Lessor, Lessor's auditor or other authorized representative or agent.

Within ten (10) days after the end of each calendar month commencing with the 10th day of the first calendar month following the month in which the lease term commences and ending with the 10th day of the month next succeeding the last month of the lease term, Lessee shall furnish Lessor with a statement, to be certified as correct by Lessee or the employee of Lessee authorized so to certify, which shall set forth the gross revenues (as herein defined) of each department operating in the demised premises for the month just concluded, and the authorized deductions, if any, therefrom. Within fifteen (15) days immediately following

the end of each leasehold year. Lessee shall furnish Lessor with a statement of the gross sales during the year so concluded of each of its said departments separately, and the amount of any authorized deductions therefrom (including therein the aggregate of the minimum monthly fixed rental paid during said year); said last-mentioned statement shall be certified as correct by Lessee or the employee of Lessee authorized so to certify, and with it Lessee shall pay to Lessor the amount of the additional rental which is payable to Lessor as shown thereby.

If Lessee shall at any time cause an audit of Lessee's business to be made by a certified public accountant, Lessee shall furnish Lessor with a copy of said audit without any cost or expense to Lessor. Lessor may, once in any calendar year, cause an audit of the business of Lessee to be made by a certified public accountant of Lessor's own selection and if statements of gross revenues previously made by Lessee to Lessor shall be found to be at least one percent (1%) less than the amount of Lessee's gross revenues shown by such audit, Lessee shall immediately pay the cost of such audit as well as the additional rental therein shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

The acceptance by Lessor of any monies paid to Lessor by Lessee as additional rental for the demised premises as shown by any yearly statement furnished by Lessee shall not be an admission of accuracy of said yearly statement or of any of the monthly statements furnished by Lessee during the year reported therein, or of the sufficiency of the amount of said additional rental payment, but Lessor shall be entitled

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at any time within two (2) years after the receipt of any such additional rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by Lessee to justify the same. Lessee shall, for the said period of two (2) years after submission to Lessor of any such statement, keep safe and intact all of Lessee's records, books, accounts and other data which in any way bear upon or are required to establish in detail Lessee's gross revenues and any authorized deductions therefrom as shown by any such statement, and shall upon request make the same available to Lessor, Lessor's auditor, representative or agent for examination at any time during said two (2) year period.

30. Subject to the paragraphs relating to destruction of premises, Lessee shall continuously during the entire term hereof conduct and carry on Lessee's aforesaid business in the demised premises and shall keep said premises open for business and cause such business to be conducted therein during each and every business day for such number of hours each day as is customary for businesses of like character in the area in which the demised premises are located to be open for business; provided, however, that this provision shall not apply if the demised premises shall be closed and the business of Lessee therein shall be temporarily shut down on account of strikes, lockouts, or causes beyond control of Lessee.

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J. A. N.

Lessee shall operate Lessee's said business in the demised premises with due diligence and efficiency and in like manner as comparable businesses in the area in which the demised premises are located are operated so as to produce all of the gross sales which may be produced by such manner of operation.

21. Notwithstanding any duty of Lessee herein to pay increase in taxes as described in Paragraph 12 of the lease, it is agreed that, to the extent Lessee pays additional or percentage rent as called for in the preceding paragraph, such payment shall be deemed a credit against any payment of taxes otherwise payable under the provisions of said Paragraph 12. The base tax fiscal year as provided in Paragraph 12 is July 1, 1972 - June 30, 1973, in relation to real property tax increase. If, as a hypothetical example only, the real property taxes in connection with such fiscal year were \$1,000 in relation to the demised premises, and if during the next tax fiscal year of July 1, 1973 - June 30, 1974, the real property taxes were \$1,100, then Lessee would be obligated to pay such sum of increase, \$100, Lessee to pay one half of such increase December 1, 1973, or \$50, and the other half of such increase on April 1, 1974, or \$50. However, if during the first leasehold year of September 1, 1972 through October 31, 1973, Lessee became obligated to pay a percentage rental, assuming a figure of \$90 of such percentage rental, such percentage rental would be due and payable November 15, 1973, and paid by Lessee at that time. That \$90 would thereupon be a credit, \$50 of it

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as a credit against the \$50 in tax increase due December 1, 1973, and the remaining \$40 of it as a credit against the \$50 due as a tax increase for April 1, 1974, making Lessee liable to pay the difference of amounts owing for tax increase, or \$10, on April 1, 1974. In connection with the foregoing, the percentage rent which would become due and payable on any November 15, would be usable as a credit only against the tax increase payment due on the December immediately following, and the April immediately following, but not thereafter. So, in the foregoing example, if the tax increase were \$100 and the percentage were \$110, then Lessee would pay the entire percentage rent of \$110 on November 15, 1973, pay no further amounts toward tax increase on December 1, 1973, and April 1, 1974, but Lessee would thereafter be liable to pay the full amount of tax increase the next year except to the extent percentage rent payments would be made thereafter, in November 15, 1974. The foregoing shall apply to taxes as described in the second paragraph of Paragraph 12, that is, real property taxes, and special assessments.

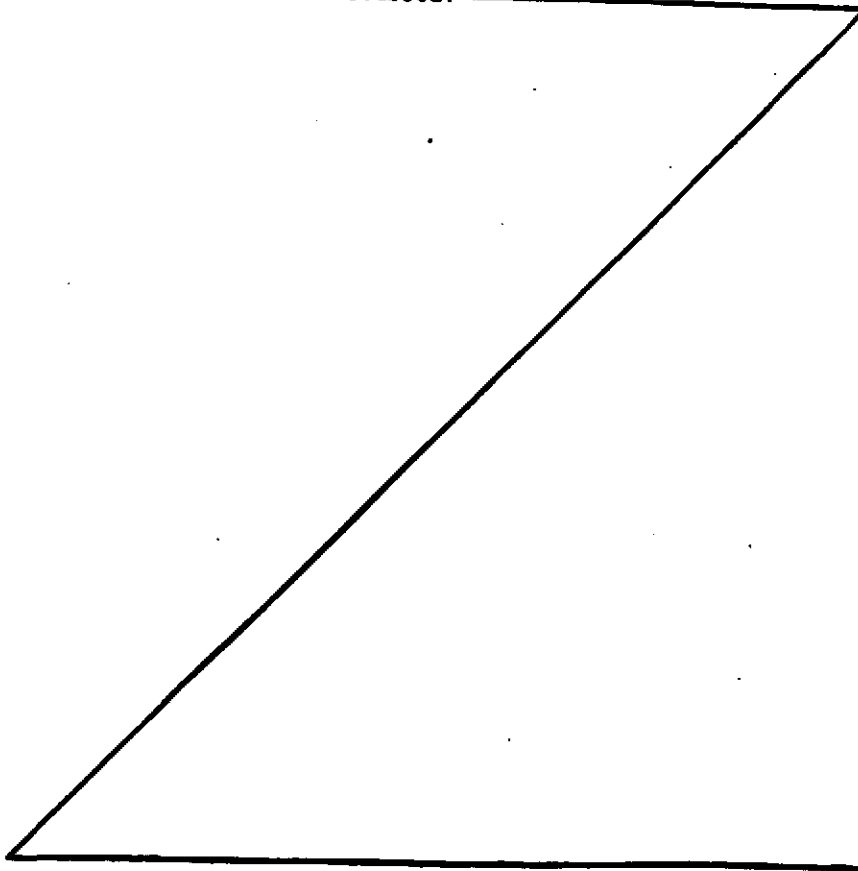
X 12. Lessor hereby gives Lessee the right and option to extend the term of this lease for an additional period of five (5) years, from and after the termination of the initial two (2) year term hereof, which two (2) year term commences September 1, 1972, and ends August 31, 1974; in the event Lessee desires to exercise such option to extend the term hereof, Lessee shall give written notice to Lessor, such notice to be received by Lessor on or before March 1, 1974; in the event such notice of extension is given and so received, then the term of this Lease shall be extended for a further period of five (5) years, commencing September 1, 1974 and ending August 31, 1979. Such period of extension shall be upon all of the terms, covenants and agreements of this Lease.

including, but not limited to, the duty of Lessee to pay increase in taxes as described in paragraph 12 of the Lease, with the fiscal tax year as referred to in such paragraph to remain, during such period of extension, the year 1972-1973. Such extended term shall not be deemed to include any further right of extension on the part of Lessee, neither for five (5) years, nor otherwise. The foregoing options to extend shall relate to the partnership of DOUGLAS MOTOR SERVICE, the Partners now being SANFORD R. DOUGLAS, RONALD S. DOUGLAS, LELAND M. DOUGLAS, JEROME H. DOUGLAS, KENNETH DOUGLAS and DAVID M. FLETT; such option shall extend to such partnership, even though, at the time of exercise of such option, all of the above-named persons are not still partners of such partnership.

The parties hereto further agree that such partnership, or any of the above-named general partners who remain as general partner in the partnership at the time of expiration of the term of this Lease, in the event the term is extended by exercise of the option as above set forth, shall have the right to meet with Lessor on or before March 31, 1979, to discuss the possibility of further extension of this Lease. In this connection, the parties acknowledge that in the event Lessor desires to use the premises for any other purpose, including, but not limited to, use as an office building, use as a hotel, or even if Lessor determines that it is in his best interest to cause the building to be demolished, even if after demolition, Lessor desires to use the space for parking, that Lessee shall have no right to discuss any further extension of the Lease with Lessor. In addition, the parties acknowledge that the legal effect of the within provision is merely to require that the parties discuss such possibility of extension, and it is under-



stood and agreed that the foregoing gives Lessee no legal right whatsoever to require that the term of lease be extended, the determination of what term of extension would be appropriate, whether five (5) years, or otherwise, and the determination of what rent would be a fair rent, being matters solely in the province of the determination of Lessor, in his sole and absolute discretion. Lessee shall have no right to seek intervention by court, arbitration, or otherwise, to determine the rental figure, or any other term or condition of such extension to be discussed.

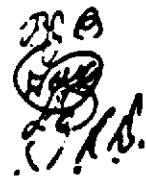


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13. The parties agree that the attached Paragraph 13, is to be deemed included and inserted in the standard form lease, in lieu of the Paragraph 13 which is deleted therefrom.

14. The parties to this Agreement further recognize and acknowledge that there is a growing effort being made on the part of local governing bodies and regulatory agencies to limit the amount of private vehicular transportation in the downtown metropolitan area. Such undertaking may take the form of restricting access to Harrison streets to private vehicles. The parties hereto recognize that any such undertakings on the part of local governing or regulatory bodies would have a serious detrimental effect upon the Lessee's business, and would have, had their existence been known at the time of the execution of this Agreement, prevented the Lessee from entering into this Agreement upon its present terms and conditions. Thus, in the event there is adopted by any local governing or regulatory body, any laws or regulations, or combinations thereof, which are designed to, or result in, reducing the quantity of private vehicular traffic on Harrison Street during the term of this Agreement, or any renewal thereof, the parties hereto agree as follows:

1. The Lessee shall keep and maintain accurate records of the average daily volume of revenues derived from parking and storage at the demised premises for each month of the term of the lease, and shall further determine such revenues for the period of six (6) months from the commencement date of any such law or regulation designed to restrict the quantity of private vehicular traffic on Harrison Street.



2. In the event the Lessee's records indicate that during said six (6) month period said average monthly revenue is less than 90% of the revenues derived from said source for the comparable six (6) months of the prior year, the parties hereto agree, upon the written request of the Lessee, given to Lessor within thirty (30) days after the close of said six (6) month period, to renegotiate this Agreement upon such terms and conditions as shall be mutually agreeable to both parties.

3. In the event that parties hereto are unable to renegotiate this Agreement to the mutual satisfaction of both the Lessor and Lessee within thirty (30) days from the date of the Lessee's written request described in Paragraph 2 above, then the Lessee shall within fifteen (15) days following said thirty (30) day negotiation period, have the right and option to terminate this Agreement by notice to Lessor, which termination shall become effective sixty (60) days after said notice is so given. If not so terminated, this lease shall remain in full force and effect in accordance with all the terms, covenants and agreements thereof.

15. If, during the term of this lease, or any renewal thereof, the Lessee is required to cease for a period in excess of five (5) consecutive days, its operation of a parking garage at the demised premises by virtue of any environmental or pollution control emergency declared by any governmental agency, then in such event, the parties hereto

agree, upon written request of the Lessee, to make an equitable adjustment in the Lessee's monthly rent payable to the Lessor. In the event the parties hereto are unable mutually to agree to an equitable adjustment in the Lessee's monthly rent within thirty (30) days following the Lessee's aforementioned written request for adjustment, such adjustment shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association.

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13.(a) In the event of any breach of this lease by Lessee, then Lessor, besides other rights and remedies he may have, shall have the right to terminate this lease, and shall have the immediate right of re-entry and may remove all persons and property from the premises. If the Lessor's right of re-entry is exercised following abandonment of the premises by the Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises also to have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

(b) If Lessee breaches this lease and abandons the property before the end of the term, or if Lessee's right to possession is terminated by Lessor because of a breach of the lease, then in either such case, the lease terminates, and Lessor may recover from Lessee all damages suffered by Lessor as the result of Lessee's failure to perform his obligations hereunder, and to the extent such damages arise from failure to pay rental, such damages shall be measured, and Lessor shall be entitled to recover from Lessee the following:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and

In addition thereto, Lessor shall be entitled to recover from Lessee any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this lease, or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (1) and (2) of Section (b) is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to subparagraph (3) of Section (b) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

(c) Lessor may relet this property prior to the time of award for breach of this lease by Lessee. In such case, if Lessor proves that in reletting the property he acted reasonably and in a good-faith effort to mitigate the damages, then he shall be entitled to the following award for Lessee's improper termination of this lease: the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided. The recovery of damages under this section is subject to any limitation specified in this lease.

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(d) Optional Remedy, To Be Deleted If Subletting,  
As Provided Below, Is Not To Be Permitted:

Even though Lessee has breached this lease and abandoned the property, this lease continues in effect for so long as Lessor does not terminate Lessee's right to possession; and Lessor may enforce all his rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease.

For the purposes of this subsection, the following do not constitute a termination of Lessee's right to possession:

- (1) Acts of maintenance or preservation or efforts to relet the property.
- (2) The appointment of a receiver on initiative of Lessor to protect his interest under this lease.

Lessee may, at his option, transfer his interest hereunder in the following manner so long as Lessor has not terminated Lessee's right to possession for breach of this lease otherwise and abandonment of the property: sublet the property, assign his interest in the lease, or both, with the consent of Lessor, which consent shall not be withheld unreasonably. A consent to one assignment or subletting with the Lessor's consent shall not be deemed to be a consent to any subsequent assignment or subletting and any such subsequent assignment or subletting without Lessor's consent shall be void and shall, at Lessor's option, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of the Lessee by operation of law without the written consent of Lessor, but such consent shall not unreasonably be withheld.

(e) The rights of Lessor under all of the above paragraphs shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law or by the terms of this lease.

Nothing in such paragraphs affects the right of Lessor to equitable relief where such relief is appropriate.

Nothing in such paragraphs affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer except as above set forth.

The bringing of any such action as described above does not affect Lessor's right to bring a separate action for relief on termination, for liquidated damages, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

*DAB*  
*RHS*  
*J.A.L.*

OAKLAND REALTY & INVESTMENT CO.

2025 PARK BOULEVARD  
OAKLAND, CALIFORNIA 94612  
TELEPHONE 444-7770

OAKLAND REAL ESTATE BOARD

STANDARD FORM LEASE

THIS LEASE made this 1st day of April, 1974, between

ALVIN H. BACHARACH and BARBARA JEAN BORSUK

as "Lessor,"

and DOUGLAS MOTOR SERVICE, a partnership

as "Lessee."

For and in consideration of the rents, covenants and agreements hereinafter agreed by Lessee to be paid, kept and performed, Lessor leases unto Lessee and Lessee hires from Lessor the following described premises, together with appurtenances, situated in the City of Oakland, County of Alameda, State of California:

That certain real property more commonly known as 1434 Harrison Street and 1439 Alice Street comprising approximately 68,000 square feet. Said premises specifically excludes 1428 Harrison Street (1,800 square feet) and 1441-43 Alice Street (4,600 square feet)

Said hiring and letting is upon the following terms and conditions:

1. TERM: POSSESSION.

(a) The term of this lease shall be for a period of seven (7) years commencing on the 1st day of April, 1974 and ending on the last day of March, 1981

(b) Lessee agrees that in the event of the inability of Lessor to deliver possession of the premises at the commencement of the term as hereinbefore specified, Lessor shall not be liable for any damage caused thereby nor shall this lease be void or voidable but Lessee shall not be liable for rent until such time as Lessor offers to deliver possession of the premises to Lessee, but the term hereof shall not be extended by such delay. If Lessee, with Lessor's consent, takes possession prior to the commencement of the term, Lessee shall do so subject to all of the covenants and conditions hereof and shall pay rent for the period ending with the commencement of the term at the same rental as that prescribed for the first month of the term, prorated at the rate of 1/30th thereof per day.

2. RENTAL. As rental for the demised premises Lessee hereby agrees to pay to Lessor without deduction, set-off, prior notice or demand, the sum of Twentyone Hundred Dollars (\$2,100.00),

per month in advance on the 1st day of each month in lawful money of the United States of America, commencing on the 1st day of April, 1974 and continuing throughout the term. Monthly rental for any partial month shall be prorated at the rate of 1/30th of monthly rent per day. Rent shall be paid to Lessor at c/o Alvin H. Bacharach, 77 Jack London Square, Oakland, CA 94607 or at such other place or places as Lessor may from time to time direct.

In consideration of Lessor executing this lease, Lessee hereby agrees to pay Lessor the sum of \$4,200.00 receipt of which is hereby acknowledged. Lessor agrees that \$2,100.00 of said sum shall be applied as the rental due for the first month of the term hereof. Lessor further agrees that if, at the time, Lessee is not in default of any of the terms, covenants and conditions contained herein, the sum of \$2,100.00, constituting a security deposit, shall be repaid to Lessee upon termination of this lease or any extension thereof.

3. USE. The premises are hereby leased to Lessee upon the express condition that Lessee shall use said premises for parking garage, auto repair shop, auto service center,

and for no other purpose without the written consent of Lessor first obtained.

Lessee agrees that the said Lessee's business shall be established and conducted throughout the term hereof in a first class manner; that Lessee will not use the demised premises for, or carry on or permit upon said premises any offensive, noisy or dangerous trade, business, manufacture or occupation or any nuisance, or anything against public policy, nor permit any section sale to be held or conducted on or about said premises; that Lessee shall not commit, or suffer to be committed, any waste upon the premises; that Lessee will not do or suffer anything to be done upon said premises which will cause structural injury to said premises or the building of which same form a part; that said premises will not be overcrowded and that no machinery, apparatus or other appliance shall be used or operated in or upon the demised premises which will in any manner injure, vibrate or shake said premises or the building of which it is a part; that no use will be made of the demised premises which will in any way impair the efficient operation of the sprinkler system (if any) within the building containing the demised premises; that Lessee will not leave the said premises unoccupied or vacant during the term hereof; and that without the

PLF/DEFI LAM/11  
WIT: Lu Douglas  
DATE: 6/24/92  
BY TSUJIMOTO REPORTER

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written permission of Lessor, no musical instrument of any sort, or any noise making device will be operated or allowed upon said premises for the purpose of attracting trade or otherwise. Lessee further agrees not to use or permit the use of the demised premises or any part thereof, for any immoral or other purpose prohibited by law or which will increase the existing rate of insurance upon the building in which said demised premises may be located, or cause a cancellation of any insurance policy covering said building or any part thereof. If any act on the part of Lessee or use of the premises by Lessee shall cause, directly or indirectly, any increase of Lessor's insurance expense, said additional expense shall be paid by Lessee to Lessor upon demand. No such payment by Lessee shall limit Lessor in the exercise of any other rights or remedies, or constitute a waiver of Lessor's right to require Lessee to discontinue such act or use. No use shall be made or permitted to be made of the demised premises or any part thereof and no acts done therein which may disturb the quiet enjoyment of any other tenant in the building of which the demised premises are a part. Lessee, at Lessee's sole cost and expense, agrees to do all things necessary to maintain the demised premises, including sidewalks adjacent thereto, in a clean, neat and sanitary manner, and to alter, repair and maintain the demised premises in compliance and conformity with all laws and ordinances, municipal, state, federal and/or any other governmental authority and any and all lawful requirements or orders of any properly constituted municipal, state, federal or other governmental board or authority, present or future, in anywise relating to the condition, use or occupancy of the demised premises throughout the entire term of this lease and to the perfect exoneration from liability of Lessor. The judgment of any court of competent jurisdiction or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such law, ordinance, requirement or order in the use of the premises, shall be conclusive of that fact as between Lessor and Lessee.

4. **ACCEPTANCE AND SURRENDER OF PREMISES; REPAIRS.** Lessee accepts the premises as they are now and agrees that the premises are now in a tenable and good condition. Lessee agrees at its own cost and expense to maintain, repair and keep the interior and exterior of the demised premises and each and every part thereof, and all appurtenances (including without limitation, sidewalks fronting thereon, wiring, plumbing, sewage system, heating and air cooling installations, all glazing in or bordering the premises and any store front), ~~excepting only the roof, exterior walls, foundations and other structural portions of the premises, in good condition and repair during the term of this lease, damage thereto by fire, earthquake, act of God or the elements alone excepted.~~ In the event Lessee should fail to make the repairs required of Lessee forthwith upon notice by Lessor, Lessor, in addition to all other remedies available hereunder or by law, and without waiving any and all other native remedies, may make same and Lessee agrees to repay Lessor the cost thereof as part of the rental payable as such on the next day upon which rent becomes due, and failure to pay same shall carry with it the same consequences as failure to pay any installment of rental. Lessee waives all rights to ~~recover the expense of Lessor as provided for in any statute or law in anywise relating to the condition of this lease or any amendment thereof or any other statute or law which may be hereafter enacted during the term of this lease and agrees upon the expiration of the term of this lease or sooner termination hereof to surrender unto Lessor the demised premises in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements alone excepted.~~ Lessee agrees, after written notice of the necessity therefor, and should the same not be caused by Lessee or by reason of Lessee's occupancy, to make necessary repairs to the roof, exterior walls (excluding painting thereof and repair of glazing), foundations and other structural portions of the premises, within a reasonable time. Lessee agrees during the full term of this lease, at its own cost and expense, to make all repairs and replacements of whatever kind or nature, either to the exterior or to the interior of said premises rendered necessary by reason of any act or omission of Lessee or its agents, servants or employees.

5. **ALTERATIONS; LIENS.** Lessee agrees not to make any alterations of, changes in or addition to the demised premises without the prior written consent of Lessor. Lessee agrees that should Lessor give said written consent all alterations, additions and improvements, including fixtures, made in, to or on the premises, except unattached movable business fixtures, shall be the property of Lessor and shall remain upon and be surrendered with the premises, except that Lessee will ascertain from Lessor within thirty (30) days before the end of this term whether Lessor desires to have the premises or any part or parts thereof, restored to their condition when the premises were delivered to Lessee and if Lessor shall so desire, Lessee shall so restore said premises or such part or parts thereof before the end of the term of this lease, entirely at Lessee's own cost and expense.

Lessee agrees that if any such alterations, changes or additions are to be made, same shall not be commenced until two days after receipt of the written consent of Lessor required by this paragraph, in order that Lessor may post appropriate notices to avoid any liability on account thereof. Lessee agrees to indemnify and save harmless Lessor from all liens, claims or demands arising out of any work performed, materials furnished, or obligations incurred by or for Lessee upon said premises during said term, and agrees not to suffer any such lien or other lien to be created.

6. **UTILITIES.** Lessee agrees to pay for all the water, fuel, gas, oil, heat, electricity, power, materials and services which may be furnished to or used in or about said premises during the term of this lease.

7. **ENTRY AND INSPECTION.** Lessee agrees that Lessor and his agents may enter upon the demised premises at all reasonable times to inspect the same, to submit them to a prospective purchaser, or to make any changes or alterations or repairs which Lessor shall consider necessary for the protection, improvement or preservation thereof, or of the building in which the demised premises are situate, or to make changes in the plumbing, wiring, meters or other equipment, fixtures or appurtenances of the building, or to post any notice provided for by law, or otherwise to protect any and all rights of Lessor; and Lessor shall have the right to erect and maintain all necessary or proper scaffolding or other structures for the making of such changes, alterations or repairs (provided the entrance to the demised premises shall not be blocked thereby and that such work shall be completed with diligence and dispatch) and there shall be no liability against Lessor for damages thereby sustained by Lessee, nor shall Lessee be entitled to any abatement of rental by reason of the exercise by Lessee of any such rights herein reserved. Nothing herein contained shall be construed to obligate Lessor to make any changes, alterations or repairs. Lessee further agrees that at any time after sixty (60) days prior to the termination of this lease, Lessor may place thereon any usual or ordinary "To Let" or "To Lease" signs.

8. **ASSIGNMENT AND SUBLETTING.** (a) Lessee shall not assign or mortgage this lease or any right hereunder or interest herein and Lessee shall not sublet the premises in whole or in part or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the said premises, or any portion thereof, without the prior written consent of Lessor. Any such assignment, mortgage or subletting without such consent shall be void and shall, at the option of Lessor, be deemed a breach of this lease. No consent to any assignment or mortgage of this lease or any subletting of said premises, shall constitute a waiver or discharge of the provisions of this paragraph except as to the specific instance covered thereby.

(b) Lessee agrees that neither this lease nor any interest herein shall be assignable or transferable by operation of law, and it is agreed that in the event any proceeding under the Bankruptcy Act, or any amendment thereto, be commenced by or against Lessee (or should there be more than one, then any Lessee) or in the event Lessee (or should there be more than one, then any Lessee) be adjudged insolvent, or makes an assignment for the benefit of creditors, or if a writ of attachment or execution be levied on the leasehold estate created hereby and be not released or satisfied within ten (10) days thereafter, or if a receiver be appointed in any proceeding or action to which Lessee is a party, with authority to take possession or control of the demised premises or the business conducted therein by Lessee, this lease at the option of Lessor shall immediately end and terminate and shall in no wise be treated as an asset of Lessee after the exercise of the aforesaid option, and Lessee shall have no further rights hereunder; and Lessor shall have the right, after the exercise of said option, to forthwith enter and repossess itself of said premises as of its original estate.



9. **HOLD HARMLESS.** This lease is made upon the express condition that Lessee agree to keep, save and hold Lessor free from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any injury or damage to any person or persons, including without limitation, Lessee, its servants, agents and employees, or property of any kind whatsoever and to whomsoever belonging, including without limitation, Lessee's, its servants', agents', and employees', from any cause or causes whatsoever, including leakage, while in, upon or in any way connected with said demised premises, or its appurtenances, or the sidewalks adjacent thereto, during the term of this lease or any occupancy hereunder. Lessee hereby covenanting and agreeing to indemnify, protect and save Lessor harmless from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses however occurring.

Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for damages to goods, wares and merchandise in, upon or about said premises and for injuries to Lessee, his agents, or third persons in or about said premises from any cause arising at any time, including, without limiting the generality of the foregoing, damages arising from acts or omissions of other tenants of the building of which the demised premises are a part and from the failure of either party to make repairs.

10. **INSURANCE.** Lessee further agrees to take out and keep in force during the life hereof at Lessee's expense, public liability and other insurance in companies acceptable to Lessor to protect against any liability to the public, whether to persons or property, incident to the use of or resulting from an accident occurring in or about said premises, the sidewalks adjacent thereto and such other areas which Lessee, its officers, servants, agents, employees, contractors and invitees shall have the right to use under the terms hereof during the term of this lease or any occupancy hereunder, in the amount of \$ 200,000.00 to indemnify against the claim of one person and \$ 500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount of not less than \$ 50,000.00 per occurrence. The said policy shall also insure the contingent liability of Lessor. Lessee further agrees, during the term hereof, to carry full coverage plate glass insurance on said demised premises in the joint names of Lessor and Lessee, and to pay the premiums therefor.

Lessee agrees that every insurer shall agree by endorsement upon the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give Lessor ten (10) days written notice at the address where rental is paid, before the policies in question shall be altered or cancelled. Either the originals or certified copies of said policies or a certificate of insurance shall be placed with or furnished Lessor.

11. **WAIVER OF SUBROGATION.** Lessor hereby releases Lessee, and Lessee hereby releases Lessor, and their respective officers, agents, employees and servants, from any and all claims or demands for damages, loss, expense or injury to the demised premises, or to the furnishings and fixtures and equipment, or inventory or other property of either Lessor or Lessee in, about or upon the demised premises, as the case may be, which be caused by or result from perils, events or happenings which are the subject of insurance carried by the respective parties and in force at the time of any such loss; provided, however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby or the expense of such insurance is not thereby increased.

12. **TAXES.** Lessee shall be liable for all taxes levied against personal property and trade fixtures on or about the demised premises, including, but without prejudice to the generality of the foregoing, shelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, printing presses, plant equipment and atmospheric coolers, and if any such taxes on Lessee's personal property or trade fixtures are levied against Lessor or Lessor's property, and if Lessor pays the same, which Lessor shall have the right to do regardless of the validity of such levy, or if the assessed value of Lessor's premises is increased by the inclusion therein of a value placed on such property of Lessee and if Lessor pays the taxes based on such increased assessment, which Lessor shall have the right to do, regardless of the validity thereof, Lessee, upon demand shall, as the case may be, repay to Lessor the taxes so levied against Lessor, or the proportion of such taxes resulting from such increase in the assessment.

In addition to the rental herein provided for and during the term hereof, Lessee agrees to pay 90% of any increases in real property taxes and special assessments levied or assessed against the building of which the demised premises are a part and the land upon which said building is located and appurtenances thereto, over and above those real property taxes and assessments levied or assessed against said premises and appurtenances for the fiscal tax year (of the government agency levying said property taxes) in which the term hereof commences (or, if the foregoing percentage has not been specified, then that portion of any such increase as the total net rentable area within the demised premises bears to the total net rentable area within the building or buildings, including the demised premises, which are included in the unit so taxed or assessed by said taxing authorities). The amounts provided for in this paragraph shall be paid by Lessee within ten (10) days after written notice thereof from Lessor.

13. **DEFAULT.** This lease is made upon the express condition and Lessee hereby agrees that:  
(a) Should Lessee fail to pay the rental herein reserved, or any part thereof, or any other sum required by Lessee to be paid to the Lessor at the times or in the manner herein provided; or  
(b) If Lessee shall abandon or vacate said premises or violate the provisions of paragraph 5(b) hereof; or  
(c) If default should be made in any of the other covenants or conditions on Lessee's part herein contained, and not be cured within ten (10) days after written notice by Lessor or Lessor's agent to Lessee of such default.

Such default, breach or act shall give Lessor, or Lessor's agents and representatives, with or without terminating this lease, the right to re-enter the demised premises or any part thereof, either with or without process of law, and expel, remove and put Lessee or any person or persons occupying said premises and remove all personal property therefrom, using such force as may be necessary to again repossess and enjoy said premises as before this demise, without prejudice to any remedy which might otherwise be used for arrears of rent or preceding breach of covenant or condition, and without liability to any person for damages sustained by reason of such removal. No such re-entry or taking of possession of said premises by Lessor shall be construed as an election on his part to terminate this lease unless a written notice of such intention be given Lessee, said notice being given as provided herein. Lessor may likewise, at Lessor's option, but at the cost of Lessee and in addition to any other remedies which Lessor may have upon such default or failure or neglect and without notice to Lessee, said Superior Court of the State of California, and be entitled as a matter of right to the appointment of a Receiver and said court may appoint such Receiver and vest in him such powers and authority as may be necessary or proper to fully protect all the rights herein granted or reserved to Lessor.

Lessor may likewise, at Lessor's option and in addition to any other remedies which Lessor may have upon such default, failure or neglect, let and relet said premises in whole or in part, altering, changing or subdividing the same as in its unqualified judgment may best accomplish the best results at such rental and upon such terms and for such length of time, whether less or more than the unexpired portion of the term of this lease, as Lessor may see fit, and Lessee shall be liable unto Lessor for any deficiency between the rentals so procured by Lessor for the period of said letting or reletting, not to exceed, however, the amount of the original term hereof, after deducting therefrom the cost of such letting or reletting, including the cost of any

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such alterations or other changes, and the rental hereon received for a period or periods identical with the term of such letting or reletting, and Lessor may institute action for the whole of such deficiency immediately upon effecting any letting or reletting and shall not thereafter be precluded from further like action in the event such letting or reletting shall not embrace the whole unexpired portion of the term hereof, or Lessor may monthly, or at such greater intervals as it may see fit, exact payment of said deficiency then existing, and the Lessee agrees to pay such deficiency then existing unto Lessor from time to time when called upon by Lessor so to do, and should this lease not be terminated, Lessor may, notwithstanding such letting or reletting, at any time thereafter elect to terminate it; or should this lease, prior to the expiration of the term hereof, be terminated by Lessor by reason of any breach hereof by Lessee, Lessor shall thereupon, at its option, be entitled to recover from Lessee the amount of the excess, if any, of the amount of rent and charges equivalent to rent received in the lease for the balance of the term hereof, over the then reasonable value of the premises for such period.

14. **ABANDONMENT.** If Lessee should abandon, vacate or surrender said premises or be dispossessed by process of law, in addition to all other remedies of Lessor, Lessor at its option may deem that any personal property belonging to Lessee left on the premises is abandoned and/or Lessor may at once enter upon said premises and remove therefrom any and all equipment, fixtures and merchandise therein and may sell said fixtures, equipment and merchandise at public or private sale at such price and upon such terms as Lessor may determine, without notice to or demand upon Lessee. Out of the proceeds of such sale, Lessor may reimburse itself for the expense of such taking, removal and sale and for any indebtedness of Lessee to Lessor and the surplus, if any, shall be accounted for to Lessee.

15. **DESTRUCTION; RENEWAL.** (a) In the event of damage or destruction of the demised premises during the term hereof from fire, earthquake, act of God or the elements, Lessor shall forthwith repair the same, provided such repairs can be made within thirty (30) days under the laws and regulations of State, Federal, County or Municipal authorities, but such destruction shall in no wise annul or void this lease, except that Lessee shall be entitled to a proportionate deduction of the monthly rental while such repairs are being made, such proportionate deduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in said premises. If such repairs cannot be made in thirty (30) days, Lessor may, at its option, make same within a reasonable time, in which event this lease shall continue in full force and effect and the monthly rental shall be proportionately abated as aforesaid in this paragraph provided. In the event that Lessor does not so elect to make such repairs which cannot be made within thirty (30) days, or such repairs cannot be made under the laws and regulations, this lease may be terminated at the option of either party.

In respect to any damage or destruction which Lessor is obligated to repair or may elect to repair under the terms of this paragraph, the provisions of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4 of the Civil Code of the State of California are waived by Lessee. In the event that the building in which the demised premises may be situated be damaged or destroyed to the extent of not less than 33 1/3% of the replacement cost thereof, Lessor may elect to terminate this lease, whether the demised premises be injured or not.

Should the parties hereto be unable to agree in writing as to the time required for repair of any such damage or destruction to the demised premises or as to the percentage of damage to the building of which the same are a part, within five (5) days after the happening of said occurrence, or to the extent, if any, of reduction of rental during the period of repair within fifteen (15) days after the happening of said occurrence, each shall within five (5) days following written notice from either party to such effect, provided such party is not in default of this lease at such time, select an arbitrator and notify in writing the other of the name and address of the arbitrator so selected. Within five (5) days thereafter the two so selected shall appoint a third arbitrator and notify in writing within said last mentioned time the Lessor and Lessee of the name and address of said appointee, or of their inability to agree upon said appointee. If such should be the fact. In the latter event the selection of the third arbitrator shall be committed to the Presiding Judge of the Superior Court of the State of California, of the County in which the demised premises are located, and such appointment shall be invoked by written request addressed to said Judge signed by Lessor or by Lessee, or their respective counsel, within five (5) days after receipt by the Lessor and Lessee of said notice of inability from said two arbitrators. The appointee of said Presiding Judge shall be accepted by said two arbitrators and Lessor and Lessee. When the three arbitrators have been selected in either of the ways above set forth, they shall forthwith convene and determine the issue or issues submitted unto them, and the written determination under the signatures of a majority of said arbitrators shall be final, binding and conclusive upon the parties hereto, should either party refuse or fail to select an arbitrator within the time as above provided and notify the other party thereof, the arbitrator selected by such other party shall be the sole arbitrator and his decision shall have the same effect as if rendered by a majority of three arbitrators. Save as modified hereby, the provisions of Title IX of Part III of the Code of Civil Procedure of the State of California dealing with the subject of arbitration, shall apply. The costs of any arbitration shall be borne equally by the parties except in the instance of refusal of a party to abide thereby, in which event, and should the award be confirmed by judicial order in conformity with the said provisions of said Title, all costs, including those incurred in the court proceeding, shall be assessed against and borne by the disaffirming party.

(b) Notwithstanding anything herein to the contrary, if, at any time during the term hereof, any governmental agency having jurisdiction over the premises demised or the building of which the said premises are a part shall require the making of any repairs, improvements or alterations to said building or premises and Lessor determines to demolish said building or premises rather than to make said repairs, improvements or alterations, or allow same to be made, Lessor, upon at least ninety (90) days written notice to Lessee shall have the right to terminate this lease. Upon the date specified in such notice, this lease shall terminate and Lessor shall have no further liability to Lessee except that: (i) Lessor shall refund to Lessee any unearned rentals and shall return any security deposit, and (ii) in the event Lessor had theretofore given written consent to any leasehold improvements upon the premises made by Lessee and had agreed, in writing, as to the cost thereof to Lessee, Lessor shall pay to Lessee upon such termination that percentage of such cost to Lessee as the number of full calendar months remaining in the original term of this lease bears to the total number of calendar months in said original term.

16. **COSTS OF SUIT.** Lessee agrees that if Lessor is involuntarily made a party defendant to any litigation concerning this lease or the demised premises or the premises of which the demised premises are a part by reason of any act or omission of Lessee and not because of any act or omission of Lessor, then Lessee shall hold harmless the Lessor from all liability by reason thereof including reasonable attorneys fees incurred by Lessor in such litigation and all taxable court costs. If legal action shall be brought by either of the parties hereto for the unlawful detainer of the premises, for the recovery of any rent due under the provisions of this lease, or because of the breach of any term, covenant or provision hereof, the party prevailing in said action (Lessor or Lessee as the case may be) shall be entitled to recover from the party not prevailing costs of suit and a reasonable attorney's fee which shall be fixed by the Judge of the Court.

17. **HOLDING OVER.** Should Lessee hold over the term hereby created with the consent of Lessor, Lessee shall become a tenant from month to month at the monthly rental payable hereunder for the prior six (6) months, and otherwise upon the covenants and conditions in this lease contained, and shall continue to be such tenant until thirty (30) days after either party hereto serves upon the other written notice of intention to terminate such monthly tenancy. Should such termination occur on any day other than the last day of any rental month, any unearned prepaid rental shall, immediately following surrender of the demised premises by Lessee, be refunded to Lessor.

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27. MISCELLANEOUS. (a) It is agreed by and between the parties hereto that all the agreements herein contained upon the part of Lessee, whether technically covenants or conditions, shall be deemed conditions for the purpose hereof, conferring upon Lessor, in the event of breach of any of said agreements, the right to terminate this lease.

(b) Lessee agrees at any time and from time to time within ten (10) days of written request from Lessor, to execute, acknowledge and deliver to Lessor a statement in writing certifying that this lease is unmodified and in full force and effect and if there have been modifications, that the same is in full force and effect as modified, and stating the modifications, and the dates to which the rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgage of the premises.

(c) Lessee and Lessee's Guarantor, if any, agree to deliver to Lessor, within thirty (30) days from written request therefor (but not more frequently than once each calendar year), a balance sheet prepared and certified by a Public Accountant or Certified Public Accountant showing the true and accurate net worth of Lessee and said Guarantor, if any, as of the close of Lessee's and said Guarantor's last accounting period.

(d) In case there is more than one Lessee the obligation of Lessee executing this lease shall be joint and several. The words "Lessee" and "Lessee" as used herein shall include the plural as well as the singular. The covenants and agreements contained herein shall be binding upon and be enforceable by the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the restrictions herein imposed on assignment by Lessee.

(e) None of the provisions of this lease and of each and every covenant, condition and provision herein contained, (f) The paragraph headings of this lease are inserted only as a matter of convenience and for reference and in no way define, limit or restrict the scope or intent of this agreement or any provision thereof or in any way affect this agreement.

Paragraphs 28-34 attached hereto are hereby referred to and incorporated herein.

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IN WITNESS WHEREOF, the parties hereto have subscribed their names, and if corporations, executed this lease by officers thereto duly authorized by resolution of said corporations, on duplicate the day and year first aboveexpressly written.

LESSOR:

LESSEE:

Alvie H. Bacharach  
ALVIE H. BACHARACH  
Bessie Jean Borauk  
BESSIE JEAN BORSAK

DOUGLAS MORTON SERVICE, a partnership  
D. R. Douglas Porter

28. In addition to the minimum monthly fixed rentals hereinabove agreed to be paid by Lessee, Lessee shall and will pay to Lessor, at the times and in the manner hereinafter specified, an additional rental in the amount equal to forty-five percent (45%) of the amount of Lessee's total revenues derived from use of the premises as a parking garage made during each leasehold year of the term hereof, in, upon or from the demised premises, less the aggregate amount of the minimum monthly fixed rental paid by Lessee during said year.

The term total revenues, as used herein, shall (subject to the exception and authorized deductions as hereinafter set forth) mean the gross amount received by Lessee from use of the premises as a parking garage, both for cash and on credit, and in case of sales on credit whether or not payment be actually made therefor; in this connection, Lessee agrees that its rates of charge for parking and/or storage shall be generally competitive with such charges in the area. Revenues shall not include those received for repairs to motor vehicles made in or upon the demised premises nor for accessories or parts sold therein, nor for sales of gasoline, oil, or fuel for motor vehicles.

Lessee agrees that the primary purpose of the premises, and approximately the same amount of space as is now so used, shall be used for parking automobiles.

There is excepted from Lessee's revenues (as said term is used herein) the amount of all sales tax receipts which

has to be accounted for by Lessee to any government or governmental agency.

As used herein, the term "leasehold year" shall mean that the first twelve (12) calendar months of the

term of this lease (contemplated to be ~~XXXXXX~~ <sup>APRIL 1, 1974</sup> ~~XXXXXX~~ <sup>APRIL 1, 1974</sup> and each twelve (12) month period thereafter.

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percentage rental for any partial year at the end of the term hereof [if in fact the term does not commence ~~XXXXXX~~ <sup>APRIL 1, 1974</sup> under the provisions of Paragraph 1(b)] shall be equitably pro-rated.

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Lessee shall keep full, complete and proper books, records, and accounts of the gross revenues (as said term is used herein), both for cash and on credit of each separate department at any time operated in the demised premises; said books, records and accounts, including any sales tax reports that Lessee may be required to furnish to any government or governmental agency, shall at all times be open to the inspection of Lessor, Lessor's auditor or other authorized representative or agent.

Within ten (10) days after the end of each calendar month commencing with the 10th day of the first calendar month following the month in which the lease term commences and ending with the 10th day of the month next succeeding the last month of the lease term, Lessee shall furnish Lessor with a statement, to be certified as correct by Lessee or the employee of Lessee authorized so to certify, which shall set forth the gross revenues (as herein defined) ~~xxx~~ operating in the demised premises for the month just concluded, and the authorized deductions, if any, therefrom. Within fifteen (15) days immediately following

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the end of each leasehold year. Lessee shall furnish Lessor with a statement of the gross sales during the year so concluded ~~and the amount of the gross sales during the year so concluded~~, and the amount of any authorized deductions therefrom (including therein the aggregate of the minimum monthly fixed rental paid during said year); said last-mentioned statement shall be certified as correct by Lessee or the employee of Lessee authorized so to certify, and with it Lessee shall pay to Lessor the amount of the additional rental which is payable to Lessor as shown thereby.

If Lessee shall at any time cause an audit of Lessee's business to be made by a certified public accountant, Lessee shall furnish Lessor with a copy of said audit without any cost or expense to Lessor. Lessor may, once in any calendar year, cause an audit of the business of Lessee to be made by a certified public accountant of Lessor's own selection and if statements of gross revenues previously made by Lessee to Lessor shall be found to be at least one percent (1%) less than the amount of Lessee's gross revenues shown by such audit, Lessee shall immediately pay the cost of such audit as well as the additional rental therein shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

The acceptance by Lessor of any monies paid to Lessor by Lessee as additional rental for the demised premises as shown by any yearly statement furnished by Lessee shall not be an admission of accuracy of said yearly statement or of any of the monthly statements furnished by Lessee during the year reported therein, or of the sufficiency of the amount of said additional rental payment, but Lessor shall be entitled

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at any time within two (2) years after the receipt of any such additional rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by Lessee to justify the same. Lessee shall, for the said period of two (2) years after submission to Lessor of any such statement, keep safe and intact all of Lessee's records, books, accounts and other data which in any way bear upon or are required to establish in detail Lessee's gross revenues and any authorized deductions therefrom as shown by any such statement, and shall upon request make the same available to Lessor, Lessor's auditor, representative or agent for examination at any time during said two (2) year period.

29. Subject to the paragraphs relating to destruction of premises, Lessee shall continuously during the entire term hereof conduct and carry on Lessee's aforesaid business in the demised premises and shall keep said premises open for business and cause such business to be conducted therein during each and every business day for such number of hours each day as is customary for businesses of like character in the area in which the demised premises are located to be open for business; provided, however, that this provision shall not apply if the demised premises shall be closed and the business of Lessee therein shall be temporarily shut down on account of strikes, lockouts, or causes beyond control of Lessee.

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Lessee shall operate Lessee's said business in the demised premises with due diligence and efficiency and in like manner as comparable businesses in the area in which the demised premises are located are operated so as to produce all of the gross sales which may be produced by such manner of operation.

30. Notwithstanding any duty of Lessee herein to pay increase in taxes as described in Paragraph 12 of the lease, it is agreed that, to the extent Lessee pays additional or percentage rent as called for in the preceding paragraph, such payment shall be deemed a credit against any payment of taxes otherwise payable under the provisions of said Paragraph 12. The base tax fiscal year as provided in Paragraph 12 is July 1, 1972 - June 30, 1973, in relation to real property tax increase. If, as a hypothetical example only, the real property taxes in connection with such fiscal year were \$1,000 in relation to the demised premises, and if during the next tax fiscal year of July 1, 1973 - June 30, 1974, the real property taxes were \$1,100, then Lessee would be obligated to pay such sum of increase, <sup>300.</sup> ~~300.~~ Lessee to pay one half of such increase December 1, 1973, or <sup>345.</sup> ~~300.~~ and the other half of such increase on April 1, 1974, or <sup>345.</sup> ~~300.~~ However, during the first leasehold year of September 1, 1972 through October 31, 1973, Lessee became obligated to pay a percentage rental, assuming a figure of \$90 of such percentage rental, such percentage rental would be due and payable November 15, 1973, and paid by Lessee at that time. That \$90 would thereupon be a credit, \$50 of it

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determination of what rent would be a fair rent, being matters solely in the province of the determination of Lessor, in his sole and absolute discretion. Lessee shall have no right to seek intervention by court, arbitration, or otherwise, to determine the rental figure, or any other term or condition of such extension to be discussed.

J. A. S.  
F. H. B.  
E. G. E.

32. The parties agree that the attached Paragraph 13, is to be deemed included and inserted in the standard form lease, in lieu of the Paragraph 13 which is deleted therefrom.

33. The parties to this Agreement further recognize and acknowledge that there is a growing effort being made on the part of local governing bodies and regulatory agencies to limit the amount of private vehicular transportation in the downtown metropolitan area. Such under taking may take the

form of restricting access to Harrison streets to private <sup>parking taxes or restricting hours of driving downtown</sup> vehicles. The parties hereto recognize that any such undertakings

on the part of local governing or regulatory bodies would have a serious detrimental effect upon the Lessee's business, and would have, had their existence been known at the time of the execution of this Agreement, prevented the Lessee from entering into this Agreement upon its present terms and conditions. Thus, in the event there is adopted by any local governing or regulatory body, any laws or regulations, or combinations thereof, which are designed to, or result in, reducing the quantity of private vehicular traffic on Harrison Street during the term of this Agreement, or any renewal thereof, the parties hereto agree as follows:

1. The Lessee shall keep and maintain accurate records of the average daily volume of revenues derived from parking and storage at the demised premises for each month of the term of the lease, and shall further determine such revenues for the period of six (6) months from the commencement date of any such law or regulation designed to restrict the quantity of private vehicular traffic on Harrison Street, or parking taxes or restricted hours of driving downtown.

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agree, upon written request of the Lessee, to make an equitable adjustment in the Lessee's monthly rent payable to the Lessor. In the event the parties hereto are unable mutually to agree to an equitable adjustment in the Lessee's monthly rent within thirty (30) days following the Lessee's aforementioned written request for adjustment, such adjustment shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association.

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BJS

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13.(a) In the event of any breach of this lease by Lessee, then Lessor, besides other rights and remedies he may have, shall have the right to terminate this lease, and shall have the immediate right of re-entry and may remove all persons and property from the premises. If the Lessor's right of re-entry is exercised following abandonment of the premises by the Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises also to have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

(b) If Lessee breaches this lease and abandons the property before the end of the term, or if Lessee's right to possession is terminated by Lessor because of a breach of the lease, then in either such case, the lease terminates, and Lessor may recover from Lessee all damages suffered by Lessor as the result of Lessee's failure to perform his obligations hereunder, and to the extent such damages arise from failure to pay rental, such damages shall be measured, and Lessor shall be entitled to recover from Lessee the following:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and

In addition thereto, Lessor shall be entitled to recover from Lessee any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this lease, or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (1) and (2) of Section (b) is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to subparagraph (3) of Section (b) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

(c) Lessor may relet this property prior to the time of award for breach of this lease by Lessee. In such case, if Lessor proves that in reletting the property he acted reasonably and in a good-faith effort to mitigate the damages, then he shall be entitled to the following award for Lessee's improper termination of this lease: the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided. The recovery of damages under this section is subject to any limitation specified in this lease.

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(d) Optional Remedy. To Be Deleted If Subletting,  
As Provided Below, Is Not To Be Permitted:

Even though Lessee has breached this lease and abandoned the property, this lease continues in effect for so long as Lessor does not terminate Lessee's right to possession; and Lessor may enforce all his rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease.

For the purposes of this subsection, the following do not constitute a termination of Lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver on initiative of Lessor to protect his interest under this lease.

Lessee may, at his option, transfer his interest hereunder in the following manner so long as Lessor has not terminated Lessee's right to possession for breach of this lease otherwise and abandonment of the property: sublet the property, assign his interest in the lease, or both, with the consent of Lessor, which consent shall not be withheld unreasonably. A consent to one assignment or subletting with the Lessor's consent shall not be deemed to be a consent to any subsequent assignment or subletting and any such subsequent assignment or subletting without Lessor's consent shall be void and shall, at Lessor's option, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of the Lessee by operation of law without the written consent of Lessor, but such consent shall not unreasonably be withheld.

(e) The rights of Lessor under all of the above paragraphs shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law or by the terms of this lease.

Nothing in such paragraphs affects the right of Lessor to equitable relief where such relief is appropriate.

Nothing in such paragraphs affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer except as above set forth.

The bringing of any such action as described above does not affect Lessor's right to bring a separate action for relief on termination, for liquidated damages, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

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STANDARD FORM LEASE

THIS LEASE made this 30th day of January 1981 between ALVIN H. BACHARACH and BARBARA JEAN BORSUK

and DOUGLAS MOTOR SERVICE, a partnership composed of LELAND DOUGLAS, RONALD DOUGLAS, SANFORD DOUGLAS and DAVID FLETT

For and in consideration of the rents, covenants and agreements hereinafter agreed by Lessee to be paid, kept and performed, Lessor leases unto Lessee and Lessee hires from Lessor the following described premises, together with appurtenances thereunto, in the City of Oakland, County of Alameda, State of California

That certain real property more commonly known as 1434 Harrison Street and 1439 Alice Street comprising approximately 68,000 square feet. Said premises specifically excludes 1428 Harrison Street (1,800 square feet) and 1441-43 Alice Street (4,600 square feet)

Said hiring and letting is upon the following terms and conditions:

1. TERM: POSSESSION.

(a) The term of this lease shall be for a period of Seven (7) years beginning on the 1st day of April 1981 and ending on the last day of March 1988

(b) Lessee agrees that in the event of the inability of Lessee to deliver possession of the premises at the commencement of the term as hereinbefore specified, Lessor shall not be liable for any damage caused thereby and that this lease shall nevertheless remain in full force and effect until such time as Lessee offers to deliver possession of the premises to Lessor. If the term of this lease shall not be extended by such delay, if Lessee, with Lessor's consent, takes possession of the premises at the commencement of the term, Lessee shall do so subject to all of the covenants and conditions hereof and shall pay rent for the period of delay at the rate of 1% of the monthly rental for the first month of the term, prorated thereafter.

2. RENTAL: The monthly rental for the premises shall be the sum of Thirty-Eight Hundred Dollars (\$3,800.00) per month in advance on the 1st day of each month.

For any partial month shall be prorated at the rate of \$3,800.00 per month. Rent shall be paid to c/o Alvin H. Bacharach, 11 Embarcadero-West, Oakland, CA. 94607 at such other place or places as Lessor may from time to time direct.

In consideration of Lessor executing this lease, Lessee has agreed to pay Lessor the sum of \$9,100.00 receipt of which is hereby acknowledged. Lessee agrees that \$3,800.00 of said sum shall be applied to the first month of the term hereof. Lessor further agrees that if, at the time Lessee is not in default of any of the terms, covenants and conditions contained herein, the sum of \$5,300.00 constituting a security deposit shall be repaid to Lessee upon termination of this lease or any extension thereof, without interest.

3. USE: The premises are hereby leased to Lessee upon the express condition that Lessee shall use said premises for parking garage, auto repair shop, auto service center, and auto rental agency

and for no other purpose without the written consent of Lessor first obtained. Lessee agrees that the said Lessee's business shall be established and conducted throughout the term hereof in a lawful and safe manner; that Lessee will not use the demised premises for, or carry on or permit upon said premises any hazardous or dangerous trade, business, manufacture or occupation or any nuisance, or anything against public policy, nor permit any such use to be held or conducted on or about said premises; that Lessee shall not commit, or suffer to be committed, or waste upon the premises; that Lessee will not do or suffer anything to be done upon said premises which will cause structural injury to said premises or the building of which same form a part; that said premises will not be overburdened and that no machinery, apparatus or other appliance shall be used or operated in or upon the demised premises which will in any manner injure, vibrate or shake said premises or the building of which it is a part; that no use will be made of the demised premises which will in any way impair the efficient operation of the sprinkler system (if any) within the building containing the demised premises; that Lessee will not leave the said premises unoccupied or vacant during the term hereof; and that without the



... of Lessor, no musical instrument of any kind shall be used on the premises for the purpose of attracting trade or other persons to the premises or any part thereof for any immoral or unlawful purpose. Rate of Insurance upon the building in which said demised premises may be located or upon any other building covering said building or any part thereof. If any act on the part of Lessee or use of the premises shall cause directly or indirectly, any increase of Lessor's insurance expense, and additional expense shall be paid by Lessee upon demand. No such payment by Lessee shall limit Lessor in the exercise of any other rights or remedies available to Lessor and demand. No such payment by Lessee shall limit Lessor in the exercise of any other rights or remedies available to Lessor and demand. No use shall be made or permitted to be made of the demised premises or any part thereof and no acts done therein which may disturb the quiet enjoyment of any other tenant in the building of which the demised premises are a part. Lessee, at Lessee's sole cost and expense, agrees to do all things necessary to maintain the demised premises, including sidewalks adjacent thereto, in a clean, neat and sanitary manner and to alter, repair and maintain the demised premises in compliance and conformity with all laws and ordinances, municipal, state, federal and/or any other governmental authority and any and all lawful requirements or orders of any properly constituted municipal, state, federal and/or any other governmental board or authority, present or future, in any way relating to the use or occupancy of the demised premises throughout the entire term of this lease and to the perfect execution thereof against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such law, ordinance, requirement or order in the use of the premises, shall be conclusive of that fact as between Lessor and Lessee.

**4. ACCEPTANCE AND SURRENDER OF PREMISES; REPAIRS.** Lessee accepts the premises as they are now and agrees that the premises are now in a tenable and good condition. Lessee agrees at its own cost and expense to maintain, repair and keep the interior and exterior of the demised premises and each and every part thereof, and all appurtenances (including, without limitation, sidewalks fronting thereon, wiring, plumbing, sewage system, heating and air cooling installations, all glass in or bordering the premises and any store front), accepting only the roof, exterior walls, foundations and other structural portions of the premises, in good condition and repair during the term of this lease, damage thereto by fire, earthquake, act of God or the elements, alone excepted. In the event Lessee should fail to make the repairs required of Lessee forthwith upon notice by Lessor, Lessor, in addition to all other remedies available hereunder or by law, and without waiving any and all other rights or remedies, may make same and Lessee agrees to repay Lessor the cost thereof as part of the rental payable as such in the next day upon which rent becomes due, and failure to pay same shall carry with it the same consequences as failure to pay any installment of rental. Lessee waives all rights to make repairs at the expense of Lessor as provided for in any statute or law in effect at the time of execution of this lease or any amendment thereof or any other statute or law which may be hereafter enacted during the term of this lease and agrees upon the expiration of the term of this lease or sooner termination hereof to surrender unto Lessor the demised premises in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements alone excepted. Lessor agrees, after written notice of the necessity thereof, and should the same not be caused by Lessee or by reason of Lessee's negligence, to make necessary repairs to the roof, exterior walls (excluding painting thereof and repair of glazing), foundations and other structural portions of the premises and replacements of whatever kind or nature, either to the exterior or to the interior of said premises rendered necessary by reason of any act or omission of Lessee or its agents, servants or employees.

**5. ALTERATIONS; LIENS.** Lessee agrees not to make any alterations of, changes in or addition to the demised premises without the prior written consent of Lessor. Lessee agrees that should Lessor give such written consent all alterations, additions and improvements, including fixtures, made in, to or on the premises, except unlawful or illegal improvements, shall be the property of Lessor and shall remain upon and be surrendered with the premises, except that Lessee will, at its expense, restore said premises or such part or parts thereof before the end of the term of this lease, entirely at Lessee's own cost and expense.

Lessee agrees that if any such alterations, changes or additions are to be made, same shall not be commenced until ten days after receipt of the written consent of Lessor required by this paragraph, in order that Lessor may first approximate notices to avoid any liability on account thereof. Lessee agrees to indemnify and save harmless Lessor from all liabilities or demands arising out of any work performed, materials furnished, or obligations incurred by or for Lessee upon said premises during said term, and agrees not to suffer any such lien or other lien to be created.

**6. UTILITIES.** Lessee agrees to pay for all the water, fuel, gas, oil, heat, electricity, power, materials and services which may be furnished to or used in or about said premises during the term of this lease.

**7. ENTRY AND INSPECTION.** Lessee agrees that Lessor and his agents may enter upon the demised premises at all reasonable times to inspect the same, to submit them to a prospective purchaser, or to make any changes or alterations or repairs which Lessor shall consider necessary for the protection, improvement or preservation thereof or of the building in which the demised premises are situated, or to make changes in the plumbing, wiring, meters or other equipment, fixtures or appurtenances of the building, or to post any notice provided for by law, or otherwise to protect any and all rights of Lessor, and Lessor shall have the right to erect and maintain all necessary or proper scaffolding or other structures for the purpose of such changes, alterations or repairs (provided the entrance to the demised premises shall not be blocked thereby and that such work shall be completed with diligence and dispatch) and there shall be no liability against Lessor for damages thereunto sustained by Lessee, nor shall Lessee be entitled to any abatement of rental by reason of the exercise by Lessor of any of the rights herein reserved. Nothing herein contained shall be construed to obligate Lessor to make any changes, alterations or repairs. Lessee further agrees that at any time after sixty (60) days prior to the termination of this lease, Lessor may place thereon any usual or ordinary "To Let" or "To Lease" signs.

**8. ASSIGNMENT AND SUBLETTING.** (a) Lessee shall not assign or mortgage this lease or any right hereunder or interest herein and Lessee shall not sublet the premises in whole or in part or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the said premises, or any portion thereof, without the prior written consent of Lessor. Any such assignment, mortgage or subletting without such consent shall be void and shall, at the option of Lessor, be deemed a breach of this lease. No consent to any assignment or mortgage of this lease or any subletting of said premises, shall constitute a waiver or discharge of the provisions of this paragraph except as to the specific instance covered thereby.

(b) Lessee agrees that neither this lease nor any interest therein shall be assignable or transferable by operation of law, and it is agreed that in the event any proceeding under the Bankruptcy Act, or any amendment thereto, be commenced by or against Lessor (or should there be more than one, then any Lessee) or in the event Lessee (or should there be more than one, then any Lessee) be adjudged insolvent, or makes an assignment for the benefit of creditors, or of a writ of attachment or execution be levied on the household estate created hereby and be not released or satisfied within ten (10) days thereafter, a receiver be appointed in any proceeding or action in which Lessee is a party, with authority to take possession and control of the demised premises or the business conducted therein by Lessee, this lease at the option of Lessor shall immediately terminate and shall in nowise be treated as an asset of Lessee after the exercise of said option, and Lessee shall have no further rights hereunder; and Lessor shall have the right, after the exercise of said option, to forthwith re-enter and re-possess itself of said premises as of its original estate.

**HOLD HARMLESS.** This lease is made upon the express condition that Lessee agrees to keep, save and hold Lessor, his heirs, assigns, agents, officers, employees, contractors, subcontractors, and all other persons, from any injury or damage to any person or persons, including without limitation Lessee, its servants, agents, officers, employees, contractors, subcontractors, and all other persons, from any cause or causes whatsoever, including negligence, while in, upon or in any way connected with the demised premises, or its appurtenances, or the sidewalks adjacent thereto, during the term of this lease or any extension hereunder. Lessee hereby covenanting and agreeing to indemnify, protect and save Lessor harmless from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses however occurring.

Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for damages to goods, wares and merchandise in, upon or about said premises and for injuries to Lessee, his agents, or third persons in or about said premises from any cause arising at any time, including, without limiting the generality of the foregoing, damages arising from acts or omissions of other tenants of the building of which the demised premises are a part and from the failure of either party to make repairs.

**10. INSURANCE.** Lessee further agrees to take out and keep in force during the life hereof at Lessee's expense, public liability and other insurance in companies acceptable to Lessor to protect against any liability to the public, whether to persons or property, incident to the use of or resulting from an accident occurring in or about said premises, the sidewalks adjacent thereto and such other areas which Lessee, its officers, servants, agents, employees, contractors and invitees shall have the right to use under the terms hereof during the term of this lease or any occupancy hereunder, in the amount of \$500,000.00 to indemnify against the claim of one person and \$1,000,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount of not less than \$100,000.00 per occurrence. The said policy shall also insure the contingent liability of Lessor. Lessee further agrees, during the term hereof, to carry full coverage plate glass insurance on said demised premises in the joint names of Lessor and Lessee, and to pay the premiums therefor.

Lessee agrees that every insurer shall agree by endorsement upon the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give Lessor ten (10) days written notice at the address where rental is paid before the policies in question shall be altered or cancelled. Either the originals or certified copies of said policies or a certificate of insurance shall be placed with or furnished Lessor.

**11. WAIVER OF SUBROGATION.** Lessor hereby releases Lessee, and Lessee hereby releases Lessor, and their respective officers, agents, employees and servants, from any and all claims or demands for damages, loss, expense or injury to the demised premises, or to the furnishings and fixtures and equipment, or inventory or other property of either Lessee or Lessor in, about or upon the demised premises, as the case may be, which are caused by or result from perils, events or happenings which are the subject of insurance carried by the respective parties and in force at the time of any such loss; provided, however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby or the expense of such insurance is not thereby increased.

**12. TAXES.** Lessee shall be liable for all taxes levied against personal property and trade fixtures on or about the demised premises, including, but without prejudice to the generality of the foregoing, shelves, counters, vaults, vault doors, wall partitions, fixtures, machinery, printing presses, plant equipment and atmospheric coolers, and if any such taxes are levied against personal property or trade fixtures are levied against Lessor or Lessor's property, and if Lessor pays the same, Lessor shall have the right to do regardless of the validity of such levy, or if the assessed value of Lessee's premises is increased by the inclusion therein of a value placed on such property of Lessee and if Lessor pays the taxes based on such increased assessment, which Lessor shall have the right to do, regardless of the validity thereof, Lessee, upon demand shall, as the case may be, repay to Lessor the taxes so levied against Lessor, or the proportion of such taxes resulting from such increase in the assessment.

In addition to the rental herein provided for and during the term hereof, Lessee agrees to pay 90% of any increase in real property taxes and special assessments levied or assessed against the building of which the demised premises are a part and the land upon which said building is located and appurtenances thereto.

Lessee shall also pay the amount of any such increase in which the term hereof commences (or, if the foregoing percentage has not been specified, then that portion of any such increase as the total net rentable area within the demised premises bears to the total net rentable area within the building or buildings, including the demised premises, which are included in the unit so taxed or assessed by said taxing authorities). The amounts provided for in this paragraph shall be paid by Lessee within ten (10) days after written notice thereof from Lessor.

**13. DEFAULT.** This lease is made upon the express condition and Lessee hereby agrees that:  
(a) Lessee shall pay the rental hereunder at the times and in the manner herein provided; or  
(b) If Lessee shall abandon or vacate said premises or violate the provisions of paragraph 8(b) hereof; or  
(c) If default should be made in any of the other covenants or conditions on Lessee's part herein contained, and not be cured within ten (10) days after written notice by Lessor or Lessor's agent to Lessee of such default, such default, breach or act shall give Lessor, or Lessor's agent and representative, with or without terminating this lease, the right to re-enter the demised premises or any part thereof, either with or without process of law, and exact, remove and put out Lessee or any person or persons occupying said premises and remove all personal property therefrom, using such force as may be necessary to again repossess and enjoy said premises as before this breach without prejudice to any remedy which might otherwise be used for arrears of rent or procuring breach of covenant or condition, and without liability to any person for damages sustained by reason of such removal. No such re-entry or taking of possession of said premises by Lessor shall be construed as an election on his part to terminate this lease unless a written notice of such intention be given Lessee, and notice being given as provided herein. Lessee may likewise, at Lessor's option, but at the cost of Lessee and in addition to any other remedies which Lessor may have upon such default or failure or neglect and without notice to Lessee, petition the Superior Court of the State of California for and be entitled as a matter of right to the appointment of a Receiver and said Court may appoint such Receiver and vest in him such powers and authority as may be necessary or proper to fully execute all the rights herein granted or reserved to Lessor.

Lessor may likewise, at Lessor's option and in addition to any other remedies which Lessor may have upon such default, failure or neglect, let and let out said premises in whole or in part, altering, changing or substituting the same as in its usual and best judgment may accomplish the best results at such rental and upon such terms and for such length of time, whether less or greater than the unexpired portion of the term of this lease, as Lessor may see fit, and Lessee shall be liable unto Lessor for any deficiency between the rentals so received by Lessor for the period of said letting or letting, not in excess, however, of the amount of the original term hereof, after deducting therefrom the cost of such letting or letting, including the cost of the

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...and Lessor, against Lessor, of the premises...  
...shall be terminated, Lessor may, at any time...  
...at the option of Lessor, at its option, at its option...

14. **ABANDONMENT.** If Lessee should abandon, vacate or surrender said premises or be dismissed by process of law, in addition to all other remedies of Lessor, Lessor at its option may deem that any personal property belonging to Lessor on the premises is abandoned and/or Lessor may at once enter upon said premises and remove therefrom any and all fixtures, furniture and merchandise therein and may sell said fixtures, equipment and merchandise at public or private sale at any price and upon such terms as Lessor may determine, without notice to or demand upon Lessee. Out of the proceeds of such sale, Lessor may reimburse itself for the expense of such taking, removal and sale and for any indebtedness of Lessee to Lessor and the surplus, if any, shall be accounted for to Lessee.

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15. **DESTRUCTION; RENEWAL.** (a) In the event of damage or destruction of the demised premises during the term hereof from fire, earthquake, act of God or the elements, Lessor shall forthwith repair the same, provided such repairs can be made within thirty (30) days under the laws and regulations of State, Federal, County or Municipal authorities, but such destruction shall in no wise annul or void this lease, except that Lessee shall be entitled to a proportionate deduction of the monthly rent while such repairs are being made, such proportionate deduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in said premises. If such repairs cannot be made within thirty (30) days, Lessor may, at its option, make same within a reasonable time, in which event this lease shall continue in full force and effect and the monthly rental shall be proportionately abated as aforesaid in this paragraph provided. In the event that Lessor does not so elect to make such repairs which cannot be made within thirty (30) days, or such repairs cannot be made under the laws and regulations, this lease may be terminated at the option of either party.

In respect to any damage or destruction which Lessor is obligated to repair or may elect to repair under the terms of this paragraph, the provisions of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4 of the Civil Code of the State of California are waived by Lessee. In the event that the building in which the demised premises are situated be damaged or destroyed to the extent of not less than 30% of the replacement cost thereof, Lessor may elect to terminate this lease, whether the demised premises be injured or not.

Should the parties hereto be unable to agree in writing as in the time required for repair of any such damage or destruction to the demised premises or as to the percentage of damage to the building of which the same are a part, within five (5) days after the happening of said occurrence, or to the extent, if any, of reduction of rental during the period of repair with fifteen (15) days after the happening of said occurrence, each shall within five (5) days following written notice from either party to such effect, provided such party is not in default of this lease at such time, select an arbitrator and notify in writing the other of the name and address of the arbitrator so selected. Within five (5) days thereafter the two so selected shall appoint a third arbitrator and notify in writing within said last mentioned time the Lessor and Lessee of the name and address of the third arbitrator shall be committed to the Presiding Judge of the Superior Court of the County in which the demised premises are located, and such appointment shall be invoked by written request addressed to said Judge signed by Lessor or by Lessee, or their respective counsel, within five (5) days after receipt by the Lessor and Lessee of notice of inability from said two arbitrators. The appointment of said Presiding Judge shall be accepted by said two arbitrators and Lessor and Lessee. When the three arbitrators have been selected in either of the ways above set forth, they shall confer with one another and determine the issue or issues submitted unto them, and the written determination under the signature of a majority of said arbitrators shall be final, binding and conclusive upon the parties hereto. Should either party refuse or fail to select an arbitrator within the time as above provided and notify the other party thereof, the arbitrator selected by such other party shall be the sole arbitrator and his decision shall have the same effect as if rendered by a majority of three arbitrators. Save as modified hereby, the provisions of Title IX of Part III of the Code of Civil Procedure of the State of California dealing with the subject of arbitration, shall apply. The costs of any arbitration shall be borne equally by the parties except in the instance of refusal of a party to abide thereby, in which event, and should the award be confirmed by judicial order in conformity with the said provisions of said Title, all costs, including those incurred in the court proceeding, shall be assessed against and borne by the disaffirming party.

(b) Notwithstanding anything herein to the contrary, if, at any time during the term hereof, any governmental agency having jurisdiction over the premises demised or the building of which the demised premises are a part shall require the making of any repairs, improvements or alterations to said building or premises and Lessee determines to demolish said building or premises rather than to make said repairs, improvements or alterations, or allow same to be made, Lessor, upon at least ninety (90) days written notice to Lessee shall have the right to terminate this lease. Upon the date specified in such notice, this lease shall terminate and Lessor shall have no further liability to Lessee except that: (i) Lessee shall refund to Lessor any unearned rentals and shall return any security deposit, and (ii) in the event Lessor had theretofore given written consent in any leasehold improvements upon the premises made by Lessee and had agreed, in writing, as to the cost thereof to Lessee, Lessor shall pay to Lessee upon such termination that percentage of such cost to Lessee as the number of full calendar months remaining in the original term of this lease bears to the total number of calendar months in said original term.

16. **COSTS OF SUIT.** Lessee agrees that if Lessor is involuntarily made a party defendant in any litigation concerning this lease or the demised premises or the premises of which the demised premises are a part by reason of any act or omission of Lessee and not because of any act or omission of Lessor, then Lessee shall hold harmless the Lessor from all liability by reason thereof including reasonable attorneys fees incurred by Lessor in such litigation and all taxable court costs. If legal action shall be brought by either of the parties hereto for the unlawful detainer of the premises, for the recovery of any rent due under the provisions of this lease, or because of the breach of any term, covenant or provision hereof, the party prevailing in said action (Lessor or Lessee as the case may be) shall be entitled to recover from the party not prevailing costs of suit and a reasonable attorney's fee which shall be fixed by the Judge of the Court.

17. **HOLDING OVER.** Should Lessee hold over the term hereby created with the consent of Lessor, Lessee shall become a tenant from month to month at the monthly rental payable hereunder for the term of (6) months, and thereafter upon the covenants and conditions in this lease contained, and shall continue to be such tenant until thirty (30) days after either party hereto serves upon the other written notice of intention to terminate such monthly tenancy. Should such termination occur on any day other than the last day of any rental month, any unearned prorated rental shall, immediately following surrender of the demised premises by Lessee, be refunded unto him.

18. **SURRENDER OF PREMISES.** In the event of a sale or conveyance by Lessor of the building or portion thereof, all the terms, conditions, covenants and conditions, express or implied, herein contained in favor of Lessee, and in such event Lessee agrees to hold Lessor to the responsibility of the successor in interest of Lessor. If any security be given by Lessee to secure faithful performance of Lessee's covenants in this lease, Lessor may transfer the security, as such, to the purchaser of the reversion and Lessor shall be discharged from any further liability in reference thereto.

19. **APPOINTMENT OF RECEIVER.** In the event a receiver be appointed at the instance of Lessor in any action against Lessee, the receiver may take possession of any personal property belonging to Lessee and used in the conduct of the business of Lessee being carried on in said premises and Lessee agrees that the entry or possession by said receiver shall not constitute an eviction of Lessee from the demised premises or any portion thereof, and Lessee hereby agrees to indemnify and hold Lessor harmless from any claim of any character by any person arising out of or connected with the entry by said receiver and taking possession of the demised premises or said personal property. Neither the application for the appointment of such receiver, nor the appointment of such receiver, shall be construed as an election on Lessor's part to terminate this lease unless a written notice of such intention is given by Lessor to Lessee.

20. **CONDEMNATION.** If any part of the demised premises or of the building of which same are a part (even though the part of the premises be taken) be condemned for a public or quasi-public use by right of eminent domain, with or without the payment or transferred by agreement in connection with such public or quasi-public use, this lease, as to the part so taken, shall terminate as of the date title shall vest in the condemnor, and the rent payable hereunder shall be adjusted so that Lessee shall be required to pay for the remainder of the term only such portion of such rent as the value of the part remaining after condemnation bears to the value of the entire premises at the date of condemnation; but in either such case Lessee shall have the option to terminate this lease as of the date when title to the part so condemned vests in the condemnor.

All compensation awarded upon such condemnation or taking shall belong and be paid to Lessor and Lessee shall have no claim thereon, and Lessee hereby irrevocably assigns and transfers to Lessor any right in compensation or damages to which Lessee may become entitled during the term hereof by reason of the condemnation of all or a part of the demised premises.

21. **SENIOR LEASE.** Lessee agrees that in the event Lessor holds the demised premises or the premises or the building of which the demised premises are a part by virtue of any lease or tenancy (herein referred to as the "Senior Lease"), Lessee will not suffer any act or omission on the premises which will violate any of the terms and conditions of the said Senior Lease, Lessee hereby admitting knowledge of and familiarity with the terms and conditions of the said Senior Lease. In the event the Senior Lease is terminated for any cause then this lease at Lessor's option shall forthwith terminate and Lessor shall not be under any responsibility or liability therefor to Lessee.

22. **SUBORDINATION.** Notwithstanding anything herein to the contrary, Lessee agrees that this lease is and shall be subordinate to any mortgage, deed of trust or other instrument of security which have been or shall be placed on the land, lot, building or land or building of which the demised premises form a part, and such subordination is hereby made effective without any further act by Lessee. Lessee agrees that at any time or from time to time upon request by Lessor to execute and deliver any instruments, releases or other documents that may be required in connection with subjecting and subordinating this lease to the lien of said mortgage, deed of trust or other instrument of security, Lessor hereby appoints Lessor as Lessee's attorney in fact, irrevocably, to execute and deliver any such instruments.

23. **SIGNS.** Lessor reserves the right to the use of the exterior wall and the roof of the demised premises and of the building of which the demised premises are a part. Lessor agrees not to incur, erect or affix any signs, advertisements, placards or writings on the exterior or roof of the demised premises or upon the entrance doors, windows, or the sidewalk on or adjacent to the demised premises without the written consent of Lessor first obtained. Any signs or placards on the premises shall be so placed upon the understanding and agreement that Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Lessee then Lessor may have same so removed at Lessee's expense. Lessee shall not be allowed to use the name of the building in which the demised premises are located, or of the owner of such building, or words to such effect in connection with any business carried on in said premises (except as the address of the Lessee) without the written consent of Lessor. Lessor reserves the right to change the name and title of the building at any time during the term of said lease. Lessee hereby expressly agrees to such change at the option of Lessor and waives any and all damage occasioned thereby.

24. **SURRENDER OF LEASE.** No act or conduct of Lessee, whether consisting of the acceptance of the keys to the demised premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the demised premises by Lessee prior to the expiration of the term hereof, and such acceptance by Lessee of surrender by Lessor shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender by Lessee. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or reconcessions, or may at the option of Lessor, operate as an assignment to him of any or all such subleases or subtenancies or reconcessions.

25. **NOTICES.** It is agreed between the parties hereto that any notice required hereunder or by law to be served upon either of the parties shall be in writing and shall be delivered personally upon the other or sent by registered or certified mail, postage prepaid, addressed to the demised premises, in the instance of Lessor, and to the place where rental is paid as provided in paragraph 2 hereof, in the instance of Lessee, or to such other address as may be from time to time furnished in writing to Lessor by Lessee or by Lessee to Lessor, such of the parties hereto waiving personal or any other service than as in this paragraph provided for. Notice by registered or certified mail shall be deemed to be communicated forty eight (48) hours from the time of mailing.

26. **CUMULATIVE REMEDIES; NON-WAIVER.** The receipt by Lessor of any rent or payment with or without knowledge of the breach of any covenant hereof shall not be deemed a waiver of any such breach and no waiver by Lessor of any such breach hereunder or any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessee. No delay or omission in the exercise of any right or remedy accruing to Lessor upon any breach by Lessee under this lease shall impair such right or remedy or be construed as a waiver of any such breach thereafter or hereafter occurring. The waiver by Lessee of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Lessor either hereunder or by law shall be cumulative and not alternative and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law.

2. MISCELLANEOUS: (a) It is agreed by and between the parties herein that all the agreements, covenants, conditions and terms of this lease shall be subject to the provisions of the lease agreement and in the event of breach of any of said agreement, the Lessee shall have the right to terminate this lease.

(b) Lessee agrees at any time and from time to time to deliver to Lessor within ten (10) days of written request from Lessor an acknowledgment and receipt to Lessor a statement in writing certifying that this lease is unmodified and that no amendments or modifications or if there have been modifications, that the same are in full force and effect as modified, and stating the date of the last modification. The dates to which the rent and other charges have been paid in advance, if any, is being intended, at any time and from time to time pursuant to this paragraph may be relied upon by any prospective purchaser, mortgagee or assignee of the premises.

(c) Lessee and Lessee's Guarantor, if any, agree to deliver to Lessor, within thirty (30) days from written request therefor (but not more frequently than once each calendar year), a balance sheet prepared and certified by a Certified Public Accountant or Certified Public Accountant showing the true and accurate net worth of Lessee and said Guarantor, if any, as of the close of Lessee's and said Guarantor's last accounting period.

(d) In case there is more than one Lessee the obligation of Lessees executing this lease shall be joint and several. The words "Lessor" and "Lessee" as used herein shall include the plural as well as the singular. The covenants and agreements contained herein shall be binding upon and enforceable by the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the restrictions herein imposed on assignment by Lessee.

(e) Time is of the essence of this lease and of each and every covenant, condition and provision herein contained.

(f) The paragraph headings of this lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this agreement or any provision thereof or in any way affect this agreement.

Paragraphs 28-32 attached hereto are by this reference thereto incorporated herein.

IN WITNESS WHEREOF, the parties hereto have subscribed their names, and if corporations, executed this lease by officers thereto duly authorized by resolution of said corporations, in duplicate the day and year first hereinafter written.

<p>LESSOR:</p> <p><i>Alvin H. Bacharach</i>  ALVIN H. BACHARACH</p> <p><i>Barbara Jean Borsuk</i>  BARBARA JEAN BORSUK</p>	<p>LESSEE:</p> <p>DOUGLAS MOTOR SERVICE, a partnership</p> <p>by <i>Edland Douglas</i>  EDLAND DOUGLAS partner</p> <p>by <i>Bonard Douglas</i>  BONARD DOUGLAS partner</p> <p>by <i>Sanford Douglas</i>  SANFORD DOUGLAS partner</p> <p>by <i>David Flett</i>  DAVID FLETT partner</p>
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RIDERS to Lease dated January 30th 1981.

between Alvin H. Bacharach and Barbara Jean Borsuk as Lessor and Douglas Motor Service, a partnership composed of Leland Douglas, Ronald Douglas, Sanford Douglas and David Flett as Lessee.

Rider No. 1. PENTAL. As rental for the demised premises Lessee hereby agrees to pay to Lessor in lawful money of the United States without deductions, set off, prior notice or demand, the sum of Three Thousand Eight Hundred Dollars (\$3,800.00) per month in advance on the first day of each month of the first twelve months of the term commencing on April 1, 1981, and continuing through March 1, 1982; the sum of Four Thousand Dollars (\$4,000.00) per month on the first day of each month commencing on the first day of April 1982, and continuing through March 1, 1983; the sum of Four Thousand Two Hundred Fifty Dollars (\$4,250.00) per month on the first day of each month, commencing on the first day of April 1983, and continuing through March 1, 1984; the sum of Four Thousand Four Hundred Fifty Dollars (\$4,450.00) per month on the first day of each month, commencing on the first day of April 1984, and continuing through March 1, 1985; the sum of Four Thousand Seven Hundred Dollars (\$4,700.00) per month, commencing on the first day of April 1985, and continuing through March 1, 1986; the sum of Five Thousand Dollars (\$5,000.00) per month, commencing on the first day of April 1986, and continuing through March 1, 1987; the sum of Five Thousand Three Hundred Dollars (\$5,300.00) per month, commencing on the first day of April 1987, and continuing through March 1, 1988.

Rider No. 2. TAXES. If at any time during the lease term under the laws of the United States Government, State of California, or any political subdivision, agency, board, commission or other duly constituted authorities thereof in which the premises are situated, a tax, excise on rent or any other tax however described is levied or assessed by any such political body, against Lessor on account of rentals payable to Lessor hereunder, or upon land or land use of any kind within the boundaries of the demised premises, such tax or excise shall be considered "taxes" for the purposes of Paragraph 12, excluding, however, from such tax or excise all general income taxes, gift taxes, inheritance taxes and estate or death taxes. Any such tax under this paragraph shall be paid ninety (90) percent by Lessee.

Rider No. 3. 13.(a) In the event of any breach of this lease by Lessee, then Lessor, besides other rights and remedies he may have, shall have the right to terminate this lease, and shall have the immediate right of re-entry and may remove all persons and property from the premises. If the Lessor's right of re-entry is exercised following abandonment of the premises by the Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises also to have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

(b) If Lessee breaches this lease and abandons the property before the end of the term, or if Lessee's right to possession is terminated by Lessor because of a breach of the lease, then in either such case, the lease

terminated, and Lessor may recover from Lessee all damages suffered by Lessor as the result of Lessee's failure to perform his obligations hereunder, and to the extent such damages arise from failure to pay rental, such damages shall be measured, and Lessor shall be entitled to recover from Lessee the following:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination.

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided.

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided, and;

In addition thereto, Lessor shall be entitled to recover from Lessee any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this lease, or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (1) and (2) of Section (b) is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to subparagraph (3) of Section (b) is computed by discounting such amount at the discount rate of Federal Reserve Bank of San Francisco at the time of award plus one percent.



(c) Lessor may relet this property prior to the time of award for breach of this lease by Lessee. In such case, if Lessor proves that in reletting the property he acted reasonably and in good-faith effort to mitigate the damages, then he shall be entitled to the following award for Lessee's improper termination of this lease: the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proved could be reasonably avoided. The recovery of damages under this section is subject to any limitation specified in this lease.

(d) Optional Remedy, To Be Deleted If Subletting, As Provided Below, Is Not To Be Permitted:

Even though Lessee has breached this lease and abandoned the property, this lease continues in effect for so long as Lessor does not terminate Lessee's right to possession; and Lessor may enforce all his rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease.

For the purposes of this subsection, the following do not constitute a termination of Lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver on initiative of Lessor to protect his interest under this lease.

Lessee may, at his option, transfer his interest hereunder in the following manner so long as Lessor has not terminated Lessee's right to possession for breach of this lease otherwise and abandonment of the property, sublet the property, assign his interest in the lease,

or both, with the consent of Lessor, which consent shall not be withheld unreasonably. A consent to one assignment or subletting with the Lessor's consent shall not be deemed to be a consent to any subsequent assignment or subletting and any such subsequent assignment for subletting without Lessor's consent shall be void and shall, at Lessor's option, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of the Lessee by operation of law without the written consent of Lessor, but such consent shall not unreasonably be withheld.

(e) The rights of Lessor under all of the above paragraph shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law or by the terms of this lease.

Nothing in such paragraph affects the right of Lessor to equitable relief where such relief is appropriate.

Nothing in such paragraph affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forceable detainer except as above set forth.

The bringing of any such action as described above does not affect Lessor's right to bring a separate action for relief on termination, for liquidated damages, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

28. In addition to the minimum monthly fixed rentals hereinabove agreed to be paid by Lessee, Lessee shall and will pay to Lessor, at the times and in the manner hereinafter specified, an additional rental in the amount equal to forty-five percent (45%) of the amount of Lessee's total revenues derived from use of the premises made during each leasehold year of the term hereof, in, upon or from the demised premises, less the aggregate amount of the minimum monthly fixed rental paid by Lessee during said year.

The term total revenues, as used herein, shall (subject to the exception and authorized deductions as hereinafter set forth) mean the gross amount received by Lessee from use of the premises as parking garage, both for cash and on credit, and in case of sales on credit whether or not payment be actually made therefor; in this connection, Lessee agrees that its rates of charge for parking and/or storage shall be generally competitive with such charges in the area. Revenues shall include those received for any sub-leases or concessionaires.

There is excepted from Lessee's revenues (as said term is used herein) the amount of all sales tax receipts which has to be accounted for by Lessee to any government or governmental agency, the sales of gasoline, oil or fuel for motor vehicles, repairs to motor vehicles and the sales of automotive parts or accessories.

As used herein, the term "leasehold year" shall mean that the first twelve (12) calendar months of the term of this lease (contemplated to be April 1, 1981 - March 31, 1982 and each successive twelve (12) month period thereafter during the term. Percentage rental for any partial year at the end of the term hereof shall be equitably pro-rated.

Lessee shall keep full, complete and proper books, records, and accounts of the gross revenues (as said term is used herein), both for cash and on credit of each separate department at any time operated in the demised premises; said books, records and accounts, including copies of any sales tax or other reports that Lessee may be required to furnish to any government or governmental agency, shall at all times be open to the inspection of Lessor, Lessor's auditor or other authorized representative or agent.

Within ten(10) days after the end of each calendar month commencing with the 10th day following the first calendar month in which the lease term commences and ending with the 10th day of the month next succeeding the last month of the lease term, Lessee shall furnish Lessor with a statement, to be certified as correct by Lessee or the employee of Lessee authorized so to certify, which shall set forth the gross revenues (as herein defined) operating in the demised premises for the month just concluded, and the authorized deductions, if any, therefrom. Within fifteen (15) days immediately following the end of each leasehold quarter, (i.e. the 15th days of the months of July, October, January and April) Lessee shall furnish Lessor with a statement of the gross sales during the quarter so concluded, and the amount of any authorized deductions therefrom (including therein the aggregate of the minimum monthly fixed rental paid during said quarter); said last-mentioned statement shall be certified as correct by Lessee or the employee of Lessee authorized so to certify, and with it Lessee shall pay to Lessor the amount of the additional rental which is payable to Lessor as shown thereby.

If Lessee shall at any time cause an audit of Lessee's business for this location to be made by a certified public accountant, Lessee shall furnish Lessor with a copy of said audit without any cost or expense to Lessor. Lessor may, once in any calendar year, cause an audit of the business of Lessee to be made by a certified public accountant of Lessor's own selection and if statements of gross revenues previously made by Lessee to Lessor shall be found to be at least one percent (1%) less than the amount of Lessee's gross revenues shown by such audit, Lessee shall immediately pay the cost of such audit as well as the additional rental therein shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

The acceptance by Lessor of any monies paid to Lessor by Lessee as additional rental for the demised premises as shown by any yearly statement furnished by Lessee shall not be an admission of accuracy of said yearly statement or of any of the monthly statements furnished by Lessee during the year reported therein, or of the sufficiency of the amount of said additional rental payment, but Lessor shall be entitled at any time within two (2) years after the receipt of any such additional rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by Lessee to justify the same. Lessee shall, for the said period of two (2) years after submission to Lessor of any such statement, keep safe and intact all of Lessee's records, books, accounts and other data which in any way bear upon or are required to establish in detail Lessee's gross revenues and any

authorized deductions therefrom as shown by any such statement, and shall upon request make the same available to Lessor, Lessor's auditor, representative or agent for examination at any time during said two (2) year period.

29. Subject to the paragraphs relating to destruction of premises, Lessee shall continuously during the entire term hereof conduct and carry on Lessee's aforesaid business in the demised premises and shall keep said premises open for business and cause such business to be conducted therein during each and every business day for such number of hours each day as is customary for businesses of like character in the area in which the demised premises are located to be open for business; provided, however, that this provision shall not apply if the demised premises shall be closed and the business of Lessee therein shall be temporarily shut down on account of strikes, lockouts, or causes beyond control of Lessee.

Lessee shall operate Lessee's said business in the demised premises with due diligence and efficiency and in like manner as comparable businesses in the area in which the demised premises are located are operated so as to produce all of the gross sales which may be produced by such manner of operation.

30. Lessor shall take out and keep enforced during the term hereof fire insurance on improvements with standard extended coverage, vandalism and malicious mischief insurance in an amount equal to not less than ninety percent (90%) of the replacement value of said improvement. Lessee will pay to Lessor ninety percent (90%) of the premiums for said insurance. Lessor may at any time request the replacement value of the improvements to be redetermined in accordance

with the rules and regulations and or practices of any Board of Underwriters or like board or body recognized and accepted by the insurance company or companies writing such insurance.

With reference to Paragraph 10, Lessee agrees to replace any broken plate glass at the Harrison street downstairs location at their sole cost and expense promptly following destruction.

31. During the term of this lease, if Lessor shall accept a bonafide offer to purchase the demised premises, then Lessor may at Lessor's option terminate and cancel this lease ninety (90) days after service of written notice of the exercise of said option upon Lessee in the manner provided for service of notice in this lease.

32. In the event that the term of this lease has not been terminated under the provision permitting such termination by the Lessor ninety (90) days prior to March 31, 1988; then Lessor agrees to negotiate with Lessee with respect to the renewal of the term, to the end that the parties may mutually agree upon the terms and conditions for such an extended term.

If, during the term of this lease, Lessor shall receive a bonafide offer to lease the demised premises at the expiration of the term, March 30, 1988 (and the term has not otherwise previously terminated), which offer to lease Lessor is willing to accept, Lessor shall notify Lessee in writing thereof. Lessee shall have the option to lease the property under the terms and conditions of said offer to lease, provided that Lessee shall notify Lessor in writing of its intention to accept the extension of said lease on the terms and conditions contained in the said offer to lease which Lessor is willing to accept. Said right shall terminate automatically and shall be null and void if Lessee shall not notify Lessor of his election within ten (10) calendar days following the delivery of the proposal to lease to Lessee.

1 that you paid a percentage of to Alvin?

2 A. Well, I seem to recall that we did give  
3 him a percentage of gas sales.

4 Q. What is that recollection based on?

5 A. I would think -- I thought we were giving  
6 him two cents a gallon for every gallon of gas we  
7 sold. I thought so.

8 Q. Do you remember any document or any event  
9 that leads you to think you were paying him two  
10 cents a gallon?

11 A. I thought for sure, but you have got all  
12 the documents here. I thought for sure I signed --  
13 maybe my father signed. When you sent a rent  
14 check, here is the rent plus a percentage or  
15 whatever, and I thought for sure we were paying him  
16 two cents a gallon. I would bet my life on it, but  
17 then again there is nothing here to substantiate  
18 that. I am trying to -- I thought we had discussed  
19 that.

20 MR. MORRISON: Let's look at some documents  
21 and see if you can find anything that will help you  
22 remember that. I am going to show you next a  
23 document entitled Standard Form Lease dated August  
24 20, 1972. We will mark that as the exhibit next in  
25 order.



1 (Document more particularly  
2 described in the index marked  
3 for identification as Plaintiffs'  
4 Exhibit No. 52)

5 MR. MORRISON: Q. Would you turn to the  
6 seventh page, paragraph 29?

7 A. 29?

8 Q. Paragraph 29, page 7.

9 A. There is no paragraph 29 on page 7.

10 Q. I am sorry. It is the seventh page in.  
11 The pages aren't numbered.

12 A. 32?

13 MR. TRINKLE: It is on page 2 of the  
14 addendum.

15 A. I see, okay.

16 MR. MORRISON: Q. Just after the signature  
17 page.

18 A. I will let Bill here find it.

19 Q. It is two pages after the signature page  
20 on the lease.

21 A. Okay.

22 Q. Take your time and review paragraph 29.

23 MR. TRINKLE: Do you want him to read the  
24 entirety of it?

25 MR. MORRISON: Q. He can read down to the

110

1 bottom of the page. That is all I am going to ask  
2 you about.

3 A. I see what it says here.

4 Q. Let's start with the first paragraph, the  
5 portion that reads "an additional rental in the  
6 amount equal to 45 percent of the amount of  
7 lessee's total" --

8 A. Paragraph 29?

9 Q. Yes. I am not starting at the  
10 beginning. It talks about the additional rental.  
11 Is that consistent with your recollection that you  
12 were to pay 45 percent of the parking revenues?

13 A. Right.

14 Q. Go down to the next paragraph and the  
15 last sentence says, quote, "Revenues shall not  
16 include those received for repairs to motor  
17 vehicles made in or upon the demised premises nor  
18 for accessories or parts sold therein, nor for  
19 sales of gasoline, oil or fuel for motor vehicles,"  
20 close quote. To your understanding that is the way  
21 the lease was written when you were at the garage?

22 A. I don't know. Did I sign this lease?

23 MS. BORSUK: No.

24 MR. MORRISON: Q. Do you see your initials  
25 anywhere on the bottom of the pages?

1           A.    I see L.D., but I don't think I see  
2 mine. I don't see mine. I see L.D. and S.R.D.

3           Q.    If you turn back to the signature block  
4 for the lease itself, whose signatures from Douglas  
5 appear there on page 6?

6           A.    My father's and Lee's, not mine. It  
7 doesn't make any difference whether I am on there  
8 or not. I still accepted the lease as is.

9           Q.    Was it your understanding during the time  
10 you were managing the Harrison Street property that  
11 Mr. Bacharach would only be getting the additional  
12 rental based on parking revenues?

13          A.    Well, like I said, yes, it is in here and  
14 I suppose he was getting paid. In addition to the  
15 minimum rent, he was getting a little extra there  
16 for 45 percent of the gross parking and I guess I  
17 am wrong, but like I said, for sure I thought I'd  
18 seen two cents per gallon, but I guess I am wrong.

19          Q.    Do you know of any document that says  
20 that you are going to pay -- you, Douglas, are  
21 going to pay Bacharach two cents a gallon?

22          A.    I asked -- I thought I asked Lee about  
23 that the other day and he said he doesn't remember  
24 and yet I know it is a lot of years back, but I am  
25 almost positive I signed something that each time

1 we sent a check in, we would be including the two  
2 cents on the gas. Maybe I am wrong.

3 Q. We will look at some documents.

4 A. Show me those recaps and we will look at  
5 recaps that I have signed and let me see if it is  
6 on there.

7 Q. Okay.

8 A. Obviously it is not going to be on there,  
9 but I would like to look at it anyway to refresh my  
10 memory. I am not trying to incriminate anybody  
11 here, but I can see by the lease it doesn't include  
12 gas.

13 Q. Just so we are complete in looking at the  
14 leases, I want to show you next two documents that  
15 have been marked as exhibits to Lee's deposition.  
16 These are Standard Form Lease dated April 1, 1974,  
17 which is Exhibit 11 to Lee's deposition and  
18 Standard Form Lease dated January 30, 1981, which  
19 is Exhibit 20 to Lee's deposition.

20 A. Okay.

21 Q. Again, if you will turn to the pages  
22 which I will give you here, I would like you to  
23 look at these and tell me whether your  
24 understanding is consistent with the language we  
25 see regarding rentals. Let's start with the 1974

1 lease. I am going to direct your attention to  
2 page -- it says at the bottom 300, which is a stamp  
3 number that appears on the lower right corner.

4 Do you see the same language in this paragraph  
5 that we referred to in the 1972 lease regarding  
6 exclusion of gasoline from the additional rental?

7 A. I see that. I read that paragraph.  
8 Didn't he want -- was he just asking for 45 percent  
9 of the gross income because I thought he wanted a  
10 percentage on sales?

11 Q. That is what we are trying to determine.  
12 If you look at the lease document, there is an  
13 exception for revenues from gasoline.

14 A. I am thinking that the little -- I do  
15 know about the negotiations with Mr. Bacharach. I  
16 thought for sure that my father had offered him a  
17 percentage on gross sales of whatever we sold out  
18 of there regardless, any kind of sale, plus a  
19 percentage of 45 percent. I can see by this that  
20 it is excluded, but I don't have anything to back  
21 me up, but I am going by my memory which is faint.  
22 I thought for sure.

23 Like I said, if you could show me a document  
24 that shows my signature on a rent check going to  
25 him with no additional revenue as far as sales are

1 concerned, then I guess I am wrong. My memory does  
2 fail me.

3 Q. To what extent when you were on-site  
4 manager did you actually review any of the leases  
5 for the property?

6 A. I had no reason to review them. I did  
7 not review any of the leases.

8 Q. Is it correct --

9 A. I didn't sign this. Even if I had signed  
10 it, it doesn't mean I read it. I see on there  
11 where -- anyway.

12 Q. Let's take a look and see if you did sign  
13 this 1974 lease that you have in front of you after  
14 Mr. Trinkle finishes reviewing it. Does your  
15 signature or your initials appear anywhere on that  
16 document?

17 A. Not on the one I have got here.

18 Q. The one you have there is Exhibit 11  
19 which is the 1974 lease?

20 A. Right. I am not on there either.

21 Q. Let me show you the third lease which is  
22 Exhibit 20 dated January 30, 1981.

23 A. I may be on that one.

24 Q. Would you review the signature page  
25 there?

1           A.    I am on there, of course.

2           Q.    Did you review this lease or not, to the  
3 best of your recollection?

4           A.    I don't know. I see the rent went up. I  
5 probably glanced through it, like I am now, only  
6 interested in the percentage and interested only in  
7 the gross sales, whether we had to pay a percentage  
8 or not. That is all I would be interested in. I  
9 wouldn't be interested in default because I wasn't  
10 worried about that.

11          Q.    Keep going until you get to the same page  
12 we have looked at on the other documents.

13          A.    Okay. Where?

14          Q.    Go to paragraph 28. You will see it is  
15 probably highlighted.

16          A.    Right here?

17          Q.    Yes. Do you see the same language that  
18 we looked at in the other?

19          A.    Right.

20          Q.    Since you were interested in gross  
21 receipts and the like, this is a provision you  
22 would have been interested in when you read this in  
23 1981?

24          A.    Yes. I don't recall that. Then I am  
25 wrong. I am wrong. Like I said, if you could

1 please produce that, I am sure you will.

2 Q. I will. I promise. I will show you  
3 those recaps.

4 A. The recaps -- I know if it is not on  
5 there, then it is not on there. Then I submit to  
6 you.

7 Q. I am going to show you some more  
8 documents that relate to replacement of storage  
9 tanks in 1975. The first one is a document that  
10 has already been marked at Lee's deposition. It is  
11 Exhibit 12. It is a handwritten letter addressed  
12 to Daniel Goalwin or something like that at the Bay  
13 Area Air Pollution Control District. Would you  
14 review that document for a moment?

15 A. Sure.

16 Q. Is that a letter you wrote?

17 A. Yes.

18 MR. MORRISON: Do you have your copy of that,  
19 Karen?

20 A. I do remember that, too.

21 MS. PETERSON: I do. It is marked up.

22 A. I do remember that letter. Phase II was  
23 a very complicated -- phase II would be a vapor  
24 recovery that when you pumped gas in, you have to  
25 have something to release the vapors wherever they

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18. **RELEASE OF PREMISES.** In the event of a sale or conveyance by Lessor of the building or land of which the demised premises are a part, the assignment of the Senior Lease (if any), the same shall operate to release Lessor from any future liability arising from any covenants or conditions, express or implied, herein contained in favor of Lessee, and in such event Lessee agrees to assume the responsibility of the successor in interest of Lessor. If any security be given by Lessee to secure faithful performance of Lessor's covenants in this lease, Lessor may transfer the security, as such, to the purchaser of the reversion and in such event Lessor shall be discharged from any further liability in reference thereto.

19. **APPOINTMENT OF RECEIVER.** In the event a receiver be appointed at the instance of Lessor in any action against Lessee, the receiver may take possession of any personal property belonging to Lessee and used in the conduct of the business of Lessee being carried on in said premises and Lessee agrees that the entry or possession by said receiver shall not constitute an eviction of Lessee from the demised premises or any portion thereof, and Lessee hereby agrees to indemnify and hold Lessor harmless from any claim of any character by any person arising out of or connected with the entry by said receiver and taking possession of the demised premises or said personal property. Neither the application for the appointment of said receiver, nor the appointment of such receiver, shall be construed as an election on Lessor's part to terminate this lease and a written notice of such intention is given by Lessor to Lessee.

20. **CONDEMNATION.** If any part of the demised premises or of the building of which same are a part (even though a part of the premises be taken) be condemned for a public or quasi-public use by right of eminent domain, with or without the taking or transferred by agreement in connection with such public or quasi-public use, this lease, as to the part so taken, shall terminate as of the date title shall vest in the condemnor, and the rent payable hereunder shall be adjusted so that Lessee shall be required to pay for the remainder of the term only such portion of such rent as the value of the part remaining after condemnation bears to the value of the entire premises at the date of condemnation; but in either such case Lessor shall have the option to terminate this lease as of the date when title to the part so condemned vests in the condemnor.

All compensation awarded upon such condemnation or taking shall belong and be paid to Lessee and Lessee shall have no claim thereon, and Lessee hereby irrevocably assigns and transfers to Lessor any right to compensation or damages to which Lessee may become entitled during the term hereof by reason of the condemnation of all or a part of the demised premises.

21. **SENIOR LEASE.** Lessee agrees that in the event Lessor holds the demised premises or the premises or the building of which the demised premises are a part by virtue of any lease or tenancy (herein referred to as the "Senior Lease"), Lessor will not suffer any act or omission on the premises which will violate any of the terms and conditions of the said Senior Lease, Lessee hereby admitting knowledge of and familiarity with the terms and conditions of the said Senior Lease. In the event the Senior Lease is terminated for any cause then this lease at Lessor's option shall forthwith terminate and Lessor shall not be under any responsibility or liability therefor to Lessee.

22. **SUBORDINATION.** Notwithstanding anything herein to the contrary, Lessee agrees that this lease is and shall be subordinate to any mortgage, deed of trust or other instrument of security which have been or shall be placed on the land and building or land or building of which the demised premises form a part, and such subordination is hereby made effective without any further act by Lessee. Lessee agrees that at any time or from time to time upon request by Lessor to execute and deliver any instruments, releases or other documents that may be required in connection with subjecting and subordinating this lease to the lien of said mortgage, deed of trust or other instrument of security, Lessee hereby appoints Lessor as Lessee's attorney in fact, irrevocably, to execute and deliver any such instruments.

23. **SIGNS.** Lessor reserves the right to the use of the exterior wall and the roof of the demised premises and of the building of which the demised premises are a part. Lessee agrees not to locate, post or affix any signs, advertisements, placards or awnings on the exterior or roof of the demised premises or upon the entrance doors, windows, or the sidewalk on or adjacent to the demised premises without the written consent of Lessor first obtained. Any signs so placed on the premises shall be in placed upon the understanding and agreement that Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not removed by Lessee then Lessor may have same removed at Lessee's expense. Lessee shall not be allowed to use the name of the building in which the demised premises are located, or of the owner of such building, or words to such effect in connection with any business carried on in said premises (except as the address of the Lessee) without the written consent of Lessor. Lessor reserves the right to change the name and title of the building at any time during the term of said lease. Lessee hereby expressly agrees to such change at the option of Lessor and waives any and all damage occasioned thereby.

24. **SURRENDER OF LEASE.** No act or conduct of Lessee, whether consisting of the acceptance of the keys to the demised premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the demised premises by Lessee prior to the expiration of the term hereof, and such acceptance by Lessor of surrender by Lessee shall only then from and shall be evidenced by a written acknowledgment of acceptance of surrender by Lessor. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or reconcessions, or may at the option of Lessor, operate as an assignment to him of any or all such subleases or subtenancies or reconcessions.

25. **NOTICE.** It is agreed between the parties hereto that any notice required hereunder or by law to be served upon either of the parties shall be in writing and shall be delivered personally upon the other or sent by registered or certified mail, postage prepaid, addressed to the demised premises, in the instance of Lessee, and to the place where rental is paid in paragraph 2 hereof, in the instance of Lessor, or to such other address as may be from time to time furnished in writing to Lessee by Lessor or by Lessor to Lessor, each of the parties hereto waiving personal or any other service than as in this paragraph provided for. Notice by registered or certified mail shall be deemed to be communicated forty-eight (48) hours from the time of mailing.

26. **CUMULATIVE REMEDIES; NON-WAIVER.** The receipt by Lessor of any rent or payment with or without knowledge of the breach of any covenant hereof shall not be deemed a waiver of any such breach and no waiver by Lessor of any such breach under or any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor. No delay or omission in the exercise of any right or remedy accruing to Lessor upon any breach by Lessee under this lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or hereafter occurring. The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Lessor either hereunder or by law shall be cumulative and not alternative and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law.

2. MISCELLANEOUS. (a) It is agreed by and between the parties hereto that all the agreements, covenants, conditions and terms of this lease shall be deemed to be incorporated by reference into this lease, and in the event of breach of any of said agreements, covenants, conditions and terms, the Lessee shall have the right to terminate this lease.

(b) Lessee agrees at any time and from time to time, upon ten (10) days of written request from Lessor, to acknowledge and deliver to Lessor a statement in writing certifying that this lease is in full force and effect, and that all the covenants and conditions hereof have been performed, that the same are in full force and effect as modified, and stating the date of the last payment of the rent and other charges to which the rent and other charges have been paid in advance, if any, it being understood that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser, mortgagee or assignee of any interest in the premises.

(c) Lessee and Lessee's Guarantor, if any, agree to deliver to Lessor, within thirty (30) days from written request therefor (but not more frequently than once each calendar year), a balance sheet prepared and certified by a Public Accountant or Certified Public Accountant showing the true and accurate net worth of Lessee and said Guarantor, if any, as of the close of Lessee's and said Guarantor's last accounting period.

(d) In case there is more than one Lessee the obligation of Lessees executing this lease shall be joint and several. The words "Lessor" and "Lessee" as used herein shall include the plural as well as the singular. The covenants and agreements contained herein shall be binding upon and be enforceable by the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the restrictions herein imposed on assignment by Lessee.

(e) Time is of the essence of this lease and of each and every covenant, condition and provision herein contained.

(f) The paragraph headings of this lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this agreement or any provision thereof or in any way effect this agreement.

Paragraphs 28-32 attached hereto are by this reference thereto incorporated herein.

IN WITNESS WHEREOF, the parties hereto have subscribed their names, and if corporations, executed this lease by officers thereunto duly authorized by resolution of said corporations, in duplicate the day and year first hereinafore written.

<p>LESSOR:</p> <p><i>Alvin H. Bacharach</i>  ALVIN H. BACHARACH</p> <p><i>Barbara Jean Borsuk</i>  BARBARA JEAN BORSUK</p>	<p>LESSEE:</p> <p>DOUGLAS MOTOR SERVICE, a partnership</p> <p>by <i>Richard Douglas</i>  RICHARD DOUGLAS partner</p> <p>by <i>Bonard Douglas</i>  BONARD DOUGLAS partner</p> <p>by <i>Sanford Douglas</i>  SANFORD DOUGLAS partner</p> <p>by <i>David Flett</i>  DAVID FLETT partner</p>
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RIDERS to Lease dated January 30th 1981.

between Alvin H. Bacharach and Barbara Jean Borsuk as Lessor and Douglas Motor Service, a partnership composed of Leland Douglas, Ronald Douglas, Sanford Douglas and David Flett as Lessee.

Rider No. 1. RENTAL. As rental for the demised premises Lessee hereby agrees to pay to Lessor in lawful money of the United States without deductions, set off, prior notice or demand, the sum of Three Thousand Eight Hundred Dollars (\$3,800.00) per month in advance on the first day of each month of the first twelve months of the term commencing on April 1, 1981, and continuing through March 1, 1982; the sum of Four Thousand Dollars (\$4,000.00) per month on the first day of each month commencing on the first day of April 1982, and continuing through March 1, 1983; the sum of Four Thousand Two Hundred Fifty Dollars (\$4,250.00) per month on the first day of each month, commencing on the first day of April 1983, and continuing through March 1, 1984; the sum of Four Thousand Four Hundred Fifty Dollars (\$4,450.00) per month on the first day of each month, commencing on the first day of April 1984, and continuing through March 1, 1985; the sum of Four Thousand Seven Hundred Dollars (\$4,700.00) per month, commencing on the first day of April 1985, and continuing through March 1, 1986; the sum of Five Thousand Dollars (\$5,000.00) per month, commencing on the first day of April 1986, and continuing through March 1, 1987; the sum of Five Thousand Three Hundred Dollars (\$5,300.00) per month, commencing on the first day of April 1987, and continuing through March 1, 1988.

Rider No. 2. TAXES. If at any time during the lesse term under the laws of the United States Government, State of California, or any political subdivision, agency, board, commission or other duly constituted authorities thereof in which the premises are situated, a tax, excise on rent or any other tax however described is levied or assessed by any such political body, against Lessor on account of rentals payable ✓ to Lessor hereunder, or upon land or land use of any kind within the boundaries of the demised premises, such tax or excise shall be considered "taxes" for the purposes of Paragraph 12, excluding, however, from such tax or excise all general income taxes, gift taxes, inheritance taxes and estate or death taxes. Any such tax under this paragraph shall be paid ninety (90) percent by Lessee.

Rider No. 3. 13.(a) In the event of any breach of this lease by Lessee, then Lessor, besides other rights and remedies he may have, shall have the right to terminate this lease, and shall have the immediate right of re-entry and may remove all persons and property from the premises. If the Lessor's right of re-entry is exercised following abandonment of the premises by the Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises also to have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

(b) If Lessee breaches this lease and abandons the property before the end of the term, or if Lessee's right to possession is terminated by Lessor because of a breach of the lease, then in either such case, the lease

terminated, and Lessor may recover from Lessee all damages suffered by Lessor as the result of Lessee's failure to perform his obligations hereunder, and to the extent such damages arise from failure to pay rental, such damages shall be measured, and Lessor shall be entitled to recover from Lessee the following:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination.

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided.

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided, and;

In addition thereto, Lessor shall be entitled to recover from Lessee any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this lease, or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (1) and (2) of Section (b) is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to subparagraph (3) of Section (b) is computed by discounting such amount at the discount rate of Federal Reserve Bank of San Francisco at the time of award plus one percent.

(c) Lessor may relet this property prior to the time of award for breach of this lease by Lessee. In such case, if Lessor proves that in reletting the property he acted reasonably and in good-faith effort to mitigate the damages, then he shall be entitled to the following award for Lessee's improper termination of this lease: the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proved could be reasonably avoided. The recovery of damages under this section is subject to any limitation specified in this lease.

(d) Optional Remedy, To Be Deleted If Subletting, As Provided Below, Is Not To Be Permitted:

Even though Lessee has breached this lease and abandoned the property, this lease continues in effect for so long as Lessor does not terminate Lessee's right to possession; and Lessor may enforce all his rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease.

For the purposes of this subsection, the following do not constitute a termination of Lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver on initiative of Lessor to protect his interest under this lease.

Lessee may, at his option, transfer his interest hereunder in the following manner so long as Lessor has not terminated Lessee's right to possession for breach of this lease otherwise and abandonment of the property, sublet the property, assign his interest in the lease,

or both, with the consent of Lessor, which consent shall not be withheld unreasonably. A consent to one assignment or subletting with the Lessor's consent shall not be deemed to be a consent to any subsequent assignment or subletting and any such subsequent assignment for subletting without Lessor's consent shall be void and shall, at Lessor's option, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of the Lessee by operation of law without the written consent of Lessor, but such consent shall not unreasonably be withheld.

(e) The rights of Lessor under all of the above paragraph shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law or by the terms of this lease.

Nothing in such paragraph affects the right of Lessor to equitable relief where such relief is appropriate.

Nothing in such paragraph affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forceable detainer except as above set forth.

The bringing of any such action as described above does not affect Lessor's right to bring a separate action for relief on termination, for liquidated damages, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

28. In addition to the minimum monthly fixed rentals hereinabove agreed to be paid by Lessee, Lessee shall and will pay to Lessor, at the times and in the manner hereinafter specified, an additional rental in the amount equal to forty-five percent (45%) of the amount of Lessee's total revenues derived from use of the premises made during each leasehold year of the term hereof, in, upon or from the demised premises, less the aggregate amount of the minimum monthly fixed rental paid by Lessee during said year.

The term total revenues, as used herein, shall (subject to the exception and authorized deductions as hereinafter set forth) mean the gross amount received by Lessee from use of the premises as parking garage, both for cash and on credit, and in case of sales on credit whether or not payment be actually made therefor; in this connection, Lessee agrees that its rates of charge for parking and/or storage shall be generally competitive with such charges in the area. Revenues shall include those received for any sub-leases or concessionaires.

There is excepted from Lessee's revenues (as said term is used herein) the amount of all sales tax receipts which has to be accounted for by Lessee to any government or governmental agency, the sales of gasoline, oil or fuel for motor vehicles, repairs to motor vehicles and the sales of automotive parts or accessories.

As used herein, the term "leasehold year" shall mean that the first twelve (12) calendar months of the term of this lease (contemplated to be April 1, 1981 - March 31, 1982 and each successive twelve (12) month period thereafter during the term. Percentage rental for any partial year at the end of the term hereof shall be equitably pro-rated.



Lessee shall keep full, complete and proper books, records, and accounts of the gross revenues (as said term is used herein), both for cash and on credit of each separate department at any time operated in the demised premises; said books, records and accounts, including copies of any sales tax or other reports that Lessee may be required to furnish to any government or governmental agency, shall at all times be open to the inspection of Lessor, Lessor's auditor or other authorized representative or agent.

Within ten(10) days after the end of each calendar month commencing with the 10th day following the first calendar month in which the lease term commences and ending with the 10th day of the month next succeeding the last month of the lease term, Lessee shall furnish Lessor with a statement, to be certified as correct by Lessee or the employee of Lessee authorized so to certify, which shall set forth the gross revenues (as herein defined) operating in the demised premises for the month just concluded, and the authorized deductions, if any, therefrom. Within fifteen (15) days immediately following the end of each leasehold quarter, (i.e. the 15th days of the months of July, October, January and April) Lessee shall furnish Lessor with a statement of the gross sales during the quarter so concluded, and the amount of any authorized deductions therefrom (including therein the aggregate of the minimum monthly fixed rental paid during said quarter); said last-mentioned statement shall be certified as correct by Lessee or the employee of Lessee authorized so to certify, and with it Lessee shall pay to Lessor the amount of the additional rental which is payable to Lessor as shown thereby.

If Lessee shall at any time cause an audit of Lessee's business for this location to be made by a certified public accountant, Lessee shall furnish Lessor with a copy of said audit without any cost or expense to Lessor. Lessor may, once in any calendar year, cause an audit of the business of Lessee to be made by a certified public accountant of Lessor's own selection and if statements of gross revenues previously made by Lessee to Lessor shall be found to be at least one percent (1%) less than the amount of Lessee's gross revenues shown by such audit, Lessee shall immediately pay the cost of such audit as well as the additional rental therein shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

The acceptance by Lessor of any monies paid to Lessor by Lessee as additional rental for the demised premises as shown by any yearly statement furnished by Lessee shall not be an admission of accuracy of said yearly statement or of any of the monthly statements furnished by Lessee during the year reported therein, or of the sufficiency of the amount of said additional rental payment, but Lessor shall be entitled at any time within two (2) years after the receipt of any such additional rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by Lessee to justify the same. Lessee shall, for the said period of two (2) years after submission to Lessor of any such statement, keep safe and intact all of Lessee's records, books, accounts and other data which in any way bear upon or are required to establish in detail Lessee's gross revenues and any

authorized deductions therefrom as shown by any such statement, and shall upon request make the same available to Lessor, Lessor's auditor, representative or agent for examination at any time during said two (2) year period.

29. Subject to the paragraphs relating to destruction of premises, Lessee shall continuously during the entire term hereof conduct and carry on Lessee's aforesaid business in the demised premises and shall keep said premises open for business and cause such business to be conducted therein during each and every business day for such number of hours each day as is customary for businesses of like character in the area in which the demised premises are located to be open for business; provided, however, that this provision shall not apply if the demised premises shall be closed and the business of Lessee therein shall be temporarily shut down on account of strikes, lockouts, or causes beyond control of Lessee.

Lessee shall operate Lessee's said business in the demised premises with due diligence and efficiency and in like manner as comparable businesses in the area in which the demised premises are located are operated so as to produce all of the gross sales which may be produced by such manner of operation.

30. Lessor shall take out and keep enforced during the term hereof fire insurance on improvements with standard extended coverage, vandalism and malicious mischief insurance in an amount equal to not less than ninety percent (90%) of the replacement value of said improvement. Lessee will pay to Lessor ninety percent (90%) of the premiums for said insurance. Lessor may at any time request the replacement value of the improvements to be redetermined in accordance

with the rules and regulations and or practices of any Board of Underwriters or like board or body recognized and accepted by the insurance company or companies writing such insurance.

With reference to Paragraph 10, Lessee agrees to replace any broken plate glass at the Harrison street downstairs location at their sole cost and expense promptly following destruction.

31. During the term of this lease, if Lessor shall accept a bonafide offer to purchase the demised premises, then Lessor may at Lessor's option terminate and cancel this lease ninety (90) days after service of written notice of the exercise of said option upon Lessee in the manner provided for service of notice in this lease.

32. In the event that the term of this lease has not been terminated under the provision permitting such termination by the Lessor ninety (90) days prior to March 31, 1988, then Lessor agrees to negotiate with Lessee with respect to the renewal of the term, to the end that the parties may mutually agree upon the terms and conditions for such an extended term.

If, during the term of this lease, Lessor shall receive a bonafide offer to lease the demised premises at the expiration of the term, March 30, 1988 (and the term has not otherwise previously terminated), which offer to lease Lessor is willing to accept, Lessor shall notify Lessee in writing thereof. Lessee shall have the option to lease the property under the terms and conditions of said offer to lease, provided that Lessee shall notify Lessor in writing of its intention to accept the extension of said lease on the terms and conditions contained in the said offer to lease which Lessor is willing to accept. Said right shall terminate automatically and shall be null and void if Lessee shall not notify Lessor of his election within ten (10) calendar days following the delivery of the proposal to lease to Lessee.

1 that you paid a percentage of to Alvin?

2 A. Well, I seem to recall that we did give  
3 him a percentage of gas sales.

4 Q. What is that recollection based on?

5 A. I would think -- I thought we were giving  
6 him two cents a gallon for every gallon of gas we  
7 sold. I thought so.

8 Q. Do you remember any document or any event  
9 that leads you to think you were paying him two  
10 cents a gallon?

11 A. I thought for sure, but you have got all  
12 the documents here. I thought for sure I signed --  
13 maybe my father signed. When you sent a rent  
14 check, here is the rent plus a percentage or  
15 whatever, and I thought for sure we were paying him  
16 two cents a gallon. I would bet my life on it, but  
17 then again there is nothing here to substantiate  
18 that. I am trying to -- I thought we had discussed  
19 that.

20 MR. MORRISON: Let's look at some documents  
21 and see if you can find anything that will help you  
22 remember that. I am going to show you next a  
23 document entitled Standard Form Lease dated August  
24 20, 1972. We will mark that as the exhibit next in  
25 order.

1 (Document more particularly  
2 described in the index marked  
3 for identification as Plaintiffs'  
4 Exhibit No. 52)

5 MR. MORRISON: Q. Would you turn to the  
6 seventh page, paragraph 29?

7 A. 29?

8 Q. Paragraph 29, page 7.

9 A. There is no paragraph 29 on page 7.

10 Q. I am sorry. It is the seventh page in.  
11 The pages aren't numbered.

12 A. 32?

13 MR. TRINKLE: It is on page 2 of the  
14 addendum.

15 A. I see, okay.

16 MR. MORRISON: Q. Just after the signature  
17 page.

18 A. I will let Bill here find it.

19 Q. It is two pages after the signature page  
20 on the lease.

21 A. Okay.

22 Q. Take your time and review paragraph 29.

23 MR. TRINKLE: Do you want him to read the  
24 entirety of it?

25 MR. MORRISON: Q. He can read down to the

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1 bottom of the page. That is all I am going to ask  
2 you about.

3 A. I see what it says here.

4 Q. Let's start with the first paragraph, the  
5 portion that reads "an additional rental in the  
6 amount equal to 45 percent of the amount of  
7 lessee's total" --

8 A. Paragraph 29?

9 Q. Yes. I am not starting at the  
10 beginning. It talks about the additional rental.  
11 Is that consistent with your recollection that you  
12 were to pay 45 percent of the parking revenues?

13 A. Right.

14 Q. Go down to the next paragraph and the  
15 last sentence says, quote, "Revenues shall not  
16 include those received for repairs to motor  
17 vehicles made in or upon the demised premises nor  
18 for accessories or parts sold therein, nor for  
19 sales of gasoline, oil or fuel for motor vehicles,"  
20 close quote. To your understanding that is the way  
21 the lease was written when you were at the garage?

22 A. I don't know. Did I sign this lease?

23 MS. BORSUK: No.

24 MR. MORRISON: Q. Do you see your initials  
25 anywhere on the bottom of the pages?

1           A.    I see L.D., but I don't think I see  
2           mine. I don't see mine. I see L.D. and S.R.D.

3           Q.    If you turn back to the signature block  
4           for the lease itself, whose signatures from Douglas  
5           appear there on page 6?

6           A.    My father's and Lee's, not mine. It  
7           doesn't make any difference whether I am on there  
8           or not. I still accepted the lease as is.

9           Q.    Was it your understanding during the time  
10          you were managing the Harrison Street property that  
11          Mr. Bacharach would only be getting the additional  
12          rental based on parking revenues?

13          A.    Well, like I said, yes, it is in here and  
14          I suppose he was getting paid. In addition to the  
15          minimum rent, he was getting a little extra there  
16          for 45 percent of the gross parking and I guess I  
17          am wrong, but like I said, for sure I thought I'd  
18          seen two cents per gallon, but I guess I am wrong.

19          Q.    Do you know of any document that says  
20          that you are going to pay -- you, Douglas, are  
21          going to pay Bacharach two cents a gallon?

22          A.    I asked -- I thought I asked Lee about  
23          that the other day and he said he doesn't remember  
24          and yet I know it is a lot of years back, but I am  
25          almost positive I signed something that each time



1 we sent a check in, we would be including the two  
2 cents on the gas. Maybe I am wrong.

3 Q. We will look at some documents.

4 A. Show me those recaps and we will look at  
5 recaps that I have signed and let me see if it is  
6 on there.

7 Q. Okay.

8 A. Obviously it is not going to be on there,  
9 but I would like to look at it anyway to refresh my  
10 memory. I am not trying to incriminate anybody  
11 here, but I can see by the lease it doesn't include  
12 gas.

13 Q. Just so we are complete in looking at the  
14 leases, I want to show you next two documents that  
15 have been marked as exhibits to Lee's deposition.  
16 These are Standard Form Lease dated April 1, 1974,  
17 which is Exhibit 11 to Lee's deposition and  
18 Standard Form Lease dated January 30, 1981, which  
19 is Exhibit 20 to Lee's deposition.

20 A. Okay.

21 Q. Again, if you will turn to the pages  
22 which I will give you here, I would like you to  
23 look at these and tell me whether your  
24 understanding is consistent with the language we  
25 see regarding rentals. Let's start with the 1974

1 lease. I am going to direct your attention to  
2 page -- it says at the bottom 300, which is a stamp  
3 number that appears on the lower right corner.

4 Do you see the same language in this paragraph  
5 that we referred to in the 1972 lease regarding  
6 exclusion of gasoline from the additional rental?

7 A. I see that. I read that paragraph.  
8 Didn't he want -- was he just asking for 45 percent  
9 of the gross income because I thought he wanted a  
10 percentage on sales?

11 Q. That is what we are trying to determine.  
12 If you look at the lease document, there is an  
13 exception for revenues from gasoline.

14 A. I am thinking that the little -- I do  
15 know about the negotiations with Mr. Bacharach. I  
16 thought for sure that my father had offered him a  
17 percentage on gross sales of whatever we sold out  
18 of there regardless, any kind of sale, plus a  
19 percentage of 45 percent. I can see by this that  
20 it is excluded, but I don't have anything to back  
21 me up, but I am going by my memory which is faint.  
22 I thought for sure.

23 Like I said, if you could show me a document  
24 that shows my signature on a rent check going to  
25 him with no additional revenue as far as sales are

1 concerned, then I guess I am wrong. My memory does  
2 fail me.

3 Q. To what extent when you were on-site  
4 manager did you actually review any of the leases  
5 for the property?

6 A. I had no reason to review them. I did  
7 not review any of the leases.

8 Q. Is it correct --

9 A. I didn't sign this. Even if I had signed  
10 it, it doesn't mean I read it. I see on there  
11 where -- anyway.

12 Q. Let's take a look and see if you did sign  
13 this 1974 lease that you have in front of you after  
14 Mr. Trinkle finishes reviewing it. Does your  
15 signature or your initials appear anywhere on that  
16 document?

17 A. Not on the one I have got here.

18 Q. The one you have there is Exhibit 11  
19 which is the 1974 lease?

20 A. Right. I am not on there either.

21 Q. Let me show you the third lease which is  
22 Exhibit 20 dated January 30, 1981.

23 A. I may be on that one.

24 Q. Would you review the signature page  
25 there?

1           A.    I am on there, of course.

2           Q.    Did you review this lease or not, to the  
3 best of your recollection?

4           A.    I don't know. I see the rent went up. I  
5 probably glanced through it, like I am now, only  
6 interested in the percentage and interested only in  
7 the gross sales, whether we had to pay a percentage  
8 or not. That is all I would be interested in. I  
9 wouldn't be interested in default because I wasn't  
10 worried about that.

11          Q.    Keep going until you get to the same page  
12 we have looked at on the other documents.

13          A.    Okay. Where?

14          Q.    Go to paragraph 28. You will see it is  
15 probably highlighted.

16          A.    Right here?

17          Q.    Yes. Do you see the same language that  
18 we looked at in the other?

19          A.    Right.

20          Q.    Since you were interested in gross  
21 receipts and the like, this is a provision you  
22 would have been interested in when you read this in  
23 1981?

24          A.    Yes. I don't recall that. Then I am  
25 wrong. I am wrong. Like I said, if you could

1 please produce that, I am sure you will.

2 Q. I will. I promise. I will show you  
3 those recaps.

4 A. The recaps -- I know if it is not on  
5 there, then it is not on there. Then I submit to  
6 you.

7 Q. I am going to show you some more  
8 documents that relate to replacement of storage  
9 tanks in 1975. The first one is a document that  
10 has already been marked at Lee's deposition. It is  
11 Exhibit 12. It is a handwritten letter addressed  
12 to Daniel Goalwin or something like that at the Bay  
13 Area Air Pollution Control District. Would you  
14 review that document for a moment?

15 A. Sure.

16 Q. Is that a letter you wrote?

17 A. Yes.

18 MR. MORRISON: Do you have your copy of that,  
19 Karen?

20 A. I do remember that, too.

21 MS. PETERSON: I do. It is marked up.

22 A. I do remember that letter. Phase II was  
23 a very complicated -- phase II would be a vapor  
24 recovery that when you pumped gas in, you have to  
25 have something to release the vapors wherever they

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October 28, 1975

Mr. Sanford Douglas  
Douglas Motor Service  
1721 Webster Street  
Oakland, CA 94612

Re: Gasoline Tank at 1434 Harrison Street.

Dear Sanford:

With reference to our meeting of yesterday, I have reviewed our lease and do not feel that we are in any way responsible for any of the cost incurred by you relative to your replacing the gasoline tank.

If you will note in Paragraph #3 of our lease, that the express use of the premises are for "Parking Garage, Auto Repair Shop, and Auto Service Center". With further reference to Paragraph #28, you specifically wanted the revenue for the sales of gasoline not to be included in your gross sales figure, as per copy attached hereto. Because of these factors, I do not feel it proper for us to participate in your expenditure of this item.

Thanking you, I remain with kindest personal regards.

Sincerely,

Alvin H. Escharach

AHB:bv  
Encl:

PLF/DEPT EXHIBIT	14
WIT:	L. Douglas
DATE:	6/24/77
PEGGY TSUJIMOTO	REPORTER

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1 Q. And what everybody knew. I want to --  
2 Miss Reporter, would you mark that next for me? I  
3 don't have multiple copies. It is Exhibit 4 to the  
4 Borsuk deposition.

5 (Document more particularly  
6 described in the index marked  
7 for identification as Defendants'  
8 Exhibit No. 14)

9 VIDEO OPERATOR: I want to remind you just to  
10 watch that microphone as you pass things over it.

11 MR. DRUMMOND: Q. Exhibit 14 to your  
12 deposition, sir, is a one-page letter from Mr.  
13 Bacharach to your father dated October 28th, 1975,  
14 and it talks about his not being responsible for  
15 replacing a gasoline tank at the Harrison Street  
16 garage. Let me ask you if you have ever seen that  
17 document before.

18 A. Yes, I saw that.

19 Q. Does that refresh your recollection at  
20 all as to whether or not there was a gas tank  
21 removed or installed in 1975 at the Harrison Street  
22 garage?

23 A. No.

24 MR. DRUMMOND: Mark this one next.

25 (Document more particularly

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1 mean as far as accounts payable?

2 Q. I mean in terms of keeping the records.

3 A. Yes. She did have responsibility of -- I  
4 don't know her exact responsibilities. I can't go  
5 into detail because I wasn't really -- I don't know  
6 what her responsibilities were as far as  
7 maintaining those, what you say, records. I just  
8 have no idea.

9 Q. During the time that you were with  
10 Douglas, do you remember, Ron, ever getting any  
11 information from Chevron about government  
12 regulations pertaining to underground storage  
13 tanks?

14 A. Government regulations, are you talking  
15 about EPA?

16 Q. EPA or state or county, but having to do  
17 with regulating underground storage tanks.

18 A. Not to my knowledge. It is possible, but  
19 I didn't read everything that came in through the  
20 mail. It is possible, but to the best of my  
21 knowledge, I knew about things like this through  
22 reading the paper, but as far as getting  
23 information from the Chevron people, I don't know.

24 Q. Do you remember getting any information  
25 about underground storage tank regulations from Bay



1 City?

2 A. I don't remember.

3 Q. Do you remember getting any information  
4 from the government agencies themselves, for  
5 example, EPA or the State Water Resources Control  
6 Board?

7 A. Overall, probably. I don't know. I  
8 probably got information. I mean, I could see it  
9 coming in the mail, but I quite frankly didn't read  
10 it. You don't read all your mail. I throw away a  
11 lot of mail at home. As soon as I see the title, I  
12 just throw it in the garbage can. I can't tell  
13 you. It may have come in through the mail, but I  
14 do not recall reading it and memorizing it and  
15 really getting down to the facts. I just don't  
16 think I did.

17 Q. During your years with Douglas, was there  
18 any discussion about designating one of the  
19 partners to take the lead role in keeping up with  
20 regulations on underground storage tanks?

21 A. No, nothing in that respect.

22 MR. MORRISON: Please mark this as an  
23 exhibit.

24 (Document more particularly  
25 described in the index marked

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1       forth in the California Administration Code of the  
2       Water Resources Control Board, Title 23, Chapter 3,  
3       Sub Chapter 16, dated June 18, 1985, requires the  
4       testing of virtually all tanks installed prior to  
5       January 1, 1984."

6               After you went to Webster Street, did you  
7       become aware at some point in time that there was a  
8       requirement for testing of all underground storage  
9       tanks?

10              A.     Yes.

11              Q.     Did you discuss that requirement with  
12       your partners?

13              A.     With my father.

14              Q.     You told him about this requirement?

15              A.     He knew about it.

16              Q.     But you discussed it with him?

17              A.     I mentioned it to him, right.

18              Q.     Did you discuss any plan for making sure  
19       all of the underground storage tanks that were on  
20       Douglas operated facilities were tested?

21              A.     He said he would take care of it.

22              Q.     Did you ever do any followup to see  
23       whether or not it was in fact being taken care of?

24              A.     No.

25              Q.     Do you know whether any of your other

1 and replacement meant?

2 A. Of course.

3 Q. If you look at the middle column, it says  
4 "Procedures, each of the possible alternatives  
5 include several of the following steps." Did you  
6 have any discussion -- even though you didn't know  
7 yourself what monitoring meant, did you have any  
8 discussion with your partners about finding out  
9 what monitoring requirements there might be as part  
10 of the new underground tank regulations?

11 A. My father said that he would follow  
12 through on this.

13 Q. With specific reference to the  
14 monitoring?

15 A. Well, he would take care of it, whatever  
16 that meant.

17 Q. I realize we talked about a number of  
18 different subjects. I am only asking you about  
19 monitoring right now.

20 A. I don't know anything about monitoring.

21 Q. My question was, did you at any time,  
22 between 1984 when you went over to Webster Street  
23 and your retirement, discuss with your partners,  
24 including your dad, making sure that the monitoring  
25 requirements of the new tank laws were complied

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1 Management.

2 A. You are not including?

3 Q. I am excluding from that the vapor  
4 exemption. I am just talking about the underground  
5 storage tanks. Do you have any recollection of any  
6 exemption for Douglas under those laws?

7 A. I don't know what this -- I don't know.  
8 I can't answer that.

9 MR. TRINKLE: That is fine.

10 MR. DRUMMOND: Q. Take a look at  
11 interrogatory 72 for a second. Interrogatory 72  
12 says "If your response to either of the preceding  
13 two interrogatories is affirmative, please identify  
14 each government official who advised you that you  
15 had such an exemption."

16 It refers back to the prior two  
17 interrogatories that asks questions about the laws  
18 of the State of California and whether you claimed  
19 an exemption. Then it says "As best known or  
20 understood, Mr. Jurro, Alameda County," and then it  
21 has a phone number 874-6434.

22 Do you see that?

23 A. Yes, I see that.

24 Q. Do you know who that fellow is?

25 A. No.

1 vapor recovery when the -- your contractor supplies  
2 you with the bulk petroleum products?

3 A. I believe that is correct.

4 Q. Can you tell me at the Webster Street  
5 garage whether you had phase I or phase II systems?

6 A. We had neither.

7 Q. Pardon me?

8 A. Neither.

9 Q. Had the Bay Area Management -- Bay Area  
10 Air Quality Management Board ever asked you to  
11 install either one of those?

12 A. No.

13 Q. Do you know why not?

14 A. We were exempt.

15 Q. Why?

16 A. Because of low through-put.

17 Q. What is low through-put?

18 A. We pumped very little gas and we were  
19 exempt from both phase I and II.

20 Q. Do you have anything in writing that  
21 would tell you from the Bay Area Air Quality  
22 Management Board that in fact that you are exempt?

23 A. We may. I know we had conversations with  
24 them, and we may have on the premises the fact that  
25 we were exempt.

1 Q. You pumped it out and left it there?  
2 A. Yes, empty.  
3 Q. Tank number 2 you replaced?  
4 A. Right.  
5 Q. Let's go back to these notices I have  
6 referred to from government agencies. You said you  
7 didn't look at a lot of mail?  
8 A. I didn't study them, no.  
9 Q. I assume from your answer that you never  
10 sent on to Mr. Bacharach any notices that Douglas  
11 received relating to the Harrison Street Garage?  
12 A. Notices for what?  
13 Q. Any notices from government agencies that  
14 Douglas might have received, you didn't send on to  
15 Mr. Bacharach?  
16 A. No.  
17 Q. To your knowledge did any of your  
18 partners send any government agency notices  
19 relating to Harrison Street to Mr. Bacharach?  
20 A. Not to my --  
21 MR. TRINKLE: Notices means a lot of  
22 different things. Are you talking about brochures  
23 related to new regulations or are you talking about  
24 notices of violation?  
25 MR. MORRISON: Q. Let's take them

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1 separately. Do you know whether any of your  
2 partners sent any notices of violation of any sort  
3 from any government agency to Mr. Bacharach  
4 relating to the Harrison Street Garage?

5 A. I don't recall.

6 Q. You don't know of any, do you?

7 A. I don't know of any.

8 Q. Same question with regard to  
9 informational mailings from government agencies  
10 about underground storage tanks, do you know  
11 whether any of your partners sent any such  
12 documents to Mr. Bacharach relating to the Harrison  
13 Street Garage?

14 A. Not that I know of.

15 Q. In addition to notices or possible  
16 mailings from government agencies, at any time  
17 after you went back to Webster Street, did you see  
18 in your mail any information from consulting firms  
19 about underground storage tanks?

20 A. Engineering firms?

21 Q. Engineering firms who are trying to sell  
22 you some service.

23 A. Occasionally see a letter from an  
24 engineering firm.

25 Q. What is your understanding of what types

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1 picked up the fact that these things had to be  
2 tested.

3 Q. Up through the time that you vacated the  
4 premises there at Harrison Street garage, did you  
5 talk to Mr. Bacharach or Mr. Borsuk about all these  
6 new requirements that the government was coming  
7 down with?

8 A. No.

9 Q. Did you suggest to them at all that they  
10 should become familiar with them?

11 A. No.

12 Q. Or learn about them?

13 A. No.

14 Q. Did they ever indicate to you that they  
15 had learned about them and were taking steps to  
16 learn more about them?

17 A. No.

18 Q. They never suggested that you ought to  
19 learn more about them?

20 A. No.

21 Q. Is it possible that back in your storage  
22 files that you might have a file on materials that  
23 you received in this time frame from Standard Oil?

24 A. No.

25 Q. No?

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(Document more particularly  
described in the index marked  
for identification as Defendants'  
Exhibit No. 9)

MR. DRUMMOND: Exhibit 10?

THE COURT REPORTER: 9.

MR. DRUMMOND: I will get it right. I  
promise.

Q. Mr. Douglas, Exhibit 9 is a two-page  
exhibit. It is a letter from Mr. Bacharach to  
Sanford Douglas, your father, dated January 9th,  
1973, and then it looks like a reply from your  
father to Mr. Bacharach on the same date, January  
9th, 1973. My first question is, have you ever  
seen either one of these two documents?

A. I didn't recall it. My attorney showed  
me this document, yes.

Q. The first sentence says, "Sorry for the  
delay in reporting our parking figures." Excuse  
me. Let me back up. The second page, the letter  
from Mr. Bacharach to your father, says "With  
reference to the paragraph 9 of the above captioned  
lease, you were to advise me monthly as to gross  
receipts."

A. Are you looking at this page or paragraph

1 9 or paragraph 29?

2 Q. I am looking at the second page.

3 A. You said 9 and this says 29.

4 Q. You are absolutely right.

5 A. I am not sure if you had the same  
6 document.

7 Q. "With reference to paragraph 29 of the  
8 above captioned lease, you were to advise me  
9 monthly as to gross receipts. I would appreciate  
10 it if you would please" inform me -- "please  
11 forward me this information." Then the first  
12 sentence of your father's response says "Sorry for  
13 the delay in reporting our parking figures but we  
14 really had a mess."

15 Is that the reporting issue that you told us  
16 about earlier this morning where Mr. Bacharach was  
17 concerned that he wasn't getting sufficient  
18 information?

19 A. Timely information.

20 Q. Timely information?

21 A. Correct.

22 Q. After January 1973, can you tell me  
23 whether or not Douglas provided information on a  
24 routine basis to Mr. Bacharach?

25 A. I think there was still delays.

1 Q. Did that continue throughout the whole  
2 history of the relationship?

3 A. No, but it did continue for a while. He  
4 wasn't getting the reports as they should have  
5 been. That was corrected.

6 Q. But after awhile that problem subsided?

7 A. Right.

8 Q. Was the Harrison Street garage a  
9 successful operation for Douglas?

10 MR. MORRISON: Objection, ambiguous.

11 MR. DRUMMOND: Q. Go ahead and answer.

12 MR. MORRISON: Successful in what terms,  
13 financially, premises, maintenance?

14 MR. DRUMMOND: Q. Let's find out.

15 A. We made a profit.

16 Q. It was profitable for you?

17 A. (Nods head)

18 Q. Did you consider it an adequate profit  
19 for the effort that you had to put in for the  
20 operation?

21 A. Parking operators are crazy. They never  
22 consider it adequate, but it was okay.

23 Q. It was acceptable?

24 A. It was acceptable.

25 Q. Why did you decide not to submit an offer

# HARRISON STREET GARAGE

## OFFERS THE FOLLOWING:

1432 Harrison St  
Oakland, Cal  
462-2489  
462-2440

1. DOWNTOWN LOCATION
2. A SOLID MULTI-STORY CONCRETE FIRE PROOF BUILDING
3. TIGHT SECURITY AT ALL TIMES
4. FREE FROM DAMPNES
5. UNLIMITED INSIDE PARKING
6. COMPLETE AUTO SERVICE FACILITIES ON PREMISES WHICH INCLUDES GAS
7. UNLIMITED INSIDE STORAGE SPACE
8. AMPLE OFFICE SPACE IS AVAILABLE
9. EASY ACCESS TO AND FROM BUILDING
10. WE CAN GIVE YOU AS MUCH AREA AS YOU DESIRE TO FULFILL YOUR BUSINESS NEEDS
11. UNLIMITED VALIDATED PARKING FOR YOUR CUSTOMERS
12. WE HAVE COMPLETE INSURANCE COVERAGE
13. IDEAL FOR A DELIVERY SERVICE OR RELATED BUSINESS

All these plus items at very reasonable rates. Call me, Ron Douglas, at the above numbers, to discuss your business needs and how we can be of service to you and your business.

PLR/DEPT EXHIBIT	4
WIT:	Lo Douglas
DATE:	6/24/92
PEGGY TSUJIMOTO	REPORTER

Thank you -  
Ron Douglas

1 that?

2 MR. MORRISON: It is Exhibit 4 from Mr. Lee  
3 Douglas's deposition.

4 MR. HANDEL: Thank you.

5 MR. MORRISON: Next I want to show you a  
6 document that is dated 11/30/76 that is entitled  
7 Douglas Motor Service and Douglas Parking and it  
8 appears to be an invoice and it has an address at  
9 the left-hand side of 1721 Webster Street but also  
10 has some notations about Harrison Street. If you  
11 would look this over, please. Let's mark that as  
12 the exhibit next in order.

13 (Document more particularly  
14 described in the index marked  
15 for identification as Plaintiffs'  
16 Exhibit No. 58)

17 MR. MORRISON: Q. Have you had a chance to  
18 look at this document?

19 A. Yes, I have.

20 Q. Is this writing yours?

21 A. No, it is my father's.

22 Q. It appears to be an invoice or statement  
23 at least written out on a Douglas invoice form?

24 A. Yes.

25 Q. At the top it says Douglas Motor Service

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1 and Douglas Parking. Then just beneath the heading  
2 it says "complete systematized automotive repair."

3 A. Right.

4 Q. "Batteries, carburetor and electrical  
5 experts, wheel aligning, brake service, body  
6 building, Oakland." It has 1721 Webster in the  
7 left-hand side. Were any of these services offered  
8 at the Harrison Street Garage?

9 A. All offered there.

10 MR. TRINKLE: The Harrison Street Garage?

11 A. We offered that to everybody. We said  
12 any time they needed anything like that, they can  
13 bring it to us and we could take care of it. That  
14 is called sublet.

15 MR. MORRISON: Q. Customers could obtain  
16 this service at the Harrison Street Garage?

17 A. Right.

18 Q. But it was sublet to somebody else?

19 A. Sublet to Douglas Motor Service. That is  
20 why that letter is on there because I wanted to let  
21 them know we would take care of them. I didn't  
22 want them to think we are taking the car off the  
23 property. That wasn't exactly too legit, so I said  
24 as far as they are concerned, we did it on the  
25 property. It just so happens I drove it two blocks



1 party written questions called interrogatories.  
2 The party who receives them has to answer them.  
3 These are the answers that Douglas's attorneys have  
4 provided to certain questions. One of the  
5 questions, interrogatory number 5, is "Please  
6 identify each sublessee who occupied any portion of  
7 the subject property at any time during Douglas  
8 Motor Service's leases of the property." You will  
9 see various people referred to in the response.  
10 That is what I want to ask you about.

11 A. Sure.

12 Q. Would you look at the response to  
13 interrogatory number 5?

14 A. Yes.

15 Q. Do you recognize --

16 A. I recognize them all except Thompson  
17 Associates. I don't recognize that.

18 Q. You don't know who that is?

19 A. Not the slightest. I do recognize the  
20 other four.

21 Q. You said you recognize everybody except  
22 Thompson?

23 A. Except the first one, Thompson  
24 Associates. I don't know who that is.

25 Q. What was your understanding of what Roy's



1 Auto Body did on the property?  
2 A. Auto body shop.  
3 Q. What types of auto body did Roy's do?  
4 Auto body, tell us what that means.  
5 A. Auto body is repairing the automobile  
6 from bumper to bumper.  
7 Q. Was it your understanding that Roy's  
8 would work on a job as small as a fender to big  
9 major crashes as far as body work?  
10 A. Somewhat. I don't know about major but  
11 somewhat.  
12 Q. What part of the property or premises did  
13 Roy's body shop occupy?  
14 A. He was on the top floor.  
15 Q. When you say top floor --  
16 A. The floor below the roof.  
17 MR. TRINKLE: I am going to remind you to let  
18 Mr. Morrison get his question out before you start  
19 answering.  
20 A. I thought I waited.  
21 MR. MORRISON: Q. You are still jumping in  
22 a little bit.  
23 A. Sorry.  
24 Q. Roy's was on the floor below the roof;  
25 right?

1 left?

2 A. I would say I thought they had left  
3 before me. I would say you are right.

4 MR. MORRISON: Let's mark as the exhibit next  
5 in order a document entitled California Real Estate  
6 Association Standard Form dated April 1, 1974,  
7 between Douglas Parking as sublessors and Thompson  
8 Associates.

9 (Document more particularly  
10 described in the index marked  
11 for identification as Plaintiffs'  
12 Exhibit No. 66)

13 MR. MORRISON: Q. Have you seen this  
14 document before?

15 A. No, I haven't.

16 Q. You mentioned when you testified earlier  
17 that you weren't sure who Thompson was?

18 A. Right, I don't know who they were,  
19 exactly.

20 Q. Look at the description of the portion of  
21 the premises that is being sublet. That is the  
22 first paragraph underneath the first page.

23 A. First paragraph?

24 Q. Right.

25 A. 1,000 square feet consisting of six

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1 contiguous parking spaces on the northeast side of  
2 the building including the wash stall. I see that.

3 Q. Does this area, as you understand it,  
4 refer to the same area that you marked on the  
5 diagram for us earlier that Thrifty and American  
6 and Trimline used?

7 A. I believe that is correct. Right, that  
8 is what I would say.

9 Q. Did you have any discussions with any of  
10 your partners about Thompson's role at the garage  
11 at any time?

12 A. I said I don't even know who he is.

13 Q. Would you turn to the second page? It is  
14 hard to read, but in the middle you will see some  
15 initials along the left margin?

16 A. Yes.

17 Q. The first initialed paragraph Eleventh  
18 says "The said premises shall not be used by the  
19 lessee during the term of this lease for other than  
20 the repairing and servicing of automobiles and  
21 trucks." Do you see that language?

22 A. Yes.

23 Q. Do you recognize any of the signatures  
24 that appear on the second page?

25 A. My father's signature there, S. R.

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1 Douglas.

2 Q. The language, quote, "the repairing and  
3 servicing of automobiles and trucks," is typed in;  
4 isn't it?

5 A. Yes, it is.

6 Q. It is not part of the printed form?

7 A. Right.

8 Q. Do you have any reason to think that  
9 isn't an accurate description of the work that  
10 Thompson performed?

11 A. Well, I don't know who he was. If they  
12 were doing work there, it was beyond my knowledge.

13 Q. You said you thought you got to the  
14 garage in about 1975?

15 A. I think. I am not sure. You have asked  
16 me that several times and I think it is 1975. I  
17 don't know for sure. I can't dispute it.

18 Q. When you first got there, was anybody  
19 performing servicing of automobiles and trucks in  
20 the area that is described here?

21 A. No. If I got there in 1975, I don't know  
22 who this man was.

23 Q. You don't know then what work was  
24 performed there before you got there?

25 A. No, I don't recall.

CALIFORNIA REAL ESTATE ASSOCIATION STANDARD FORM

This Indenture, made the First day of April A. D. 1974  
 between Douglas Parking Garages, as Sub-Lessor

and Thompson Associates Inc., as Sub-Lessee

hereinafter called the lessor,  
 hereinafter called the lessee.  
 WITNESSETH, that the lessor does by these presents, lease and demise unto the lessee all of the property  
 situated in the City of Oakland  
 County of Alameda State of California, described as follows, to wit:

1432 Harrison Street: Being that portion of the ground floor of the building as follows: approximately 1000 sq. ft. of area consisting of 6 contiguous parking spaces on the N.E. side of the building including the wash stall, hydraulic hoist stall and the four contiguous stalls to the west, together with all utilities, fixtures and appliances therein.

for the term of one year with an option for one additional year at the same rate  
 beginning April 1st 1974 and ending March 31st 1975  
 for the total rent or sum of Two thousand four hundred and  
no/100 Dollars.

in lawful money of the United States of America, payable as follows, to wit: Two hundred dollars per month on the first day of each month in advance, said rental to include all utilities.

1. It is hereby mutually agreed that Sub Lessee is to obtain his own resale license and storekeeper's Permit and furnish sub-lessor with a copy of same.
2. It is further mutually agreed that Sub-Lessee is to obtain insurance from a reputable company with minimum limits of \$100,000 and 250,000 for public liability and a property damage policy with minimum limits of \$25,000, together with a product's insurance policy, naming Sub-Lessors as co-insured. All of the aforesated policies are to be paid for by Sub Lessee and kept in force for the entire length of lease.

All of said rent shall be paid at the office of Douglas Parking Garages, 1432 Harrison Street, Oakland, CA the agent of the lessor, 1432 Harrison Street, Oakland, CA California, or at such other place as may be designated by the lessor.

IN ADDITION THERETO IT IS HEREBY AGREED AS FOLLOWS, TO WIT:

First: That the lessee shall pay the lessor said rent in the manner hereinbefore specified, and shall not let or underlet the whole or any part of said premises, nor sell or assign this lease, either voluntarily or by operation of law, nor allow said property to be occupied by anyone contrary to the terms hereof, without the written consent of the lessor;

Second: That should said rent be not paid when due or should the lessee default in any of the covenants or conditions contained herein, the lessor, or his representative or agent, may re-enter said premises and remove all persons therefrom;

Third: That the lessee shall occupy said demised premises and shall keep the same in good condition, including such improvements as may be made thereon hereafter, the usual wear and tear and damage by the elements excepted, and shall not make any alterations thereon without the written consent of the lessor and shall not commit or suffer to be committed any waste upon said premises;

Fourth: That said premises shall not be used by the lessee, nor anyone else, during the term hereof or any extension thereof, for the sale of any intoxicating liquors, nor for any illegal or immoral purpose, and that possession of said premises by the lessee or his successors or assigns shall not be construed as conveying any title thereto or ownership thereof;

Fifth: That all Governmental laws and ordinances shall be complied with by the lessee;

FILE/DEPT EXHIBIT 66  
 WITH E. Douglas  
 DATE: 7/1/74  
 PROB. TSH:MTG REPORTER

Sixth: That the lessee waives all rights under Section 1942 of the Civil Code of California and releases the lessor from any and all damages which may or may not be sustained by the lessee or any other party during the term of the lease or in possession of said premises.

Seventh: That should the necessity of such premises, by the lessee, cause the premium fire and liability insurance rates applicable thereto to be increased, the lessee shall pay the difference upon the amount of fire and liability insurance now being carried by the lessor and said difference shall be in addition to the amount of rental specified herein and shall be paid to the lessor upon demand.

Eighth: That should the lessee be compelled to commence or sustain an action at law to collect said rent or parts thereof or to dispossess the lessor or to recover possession of said premises, the lessee shall pay all costs in connection therewith including a reasonable fee for the attorney of the lessor.

Ninth: That the covenants of this lease, of any event or condition herein expressed shall not violate the same or any other covenants or conditions contained herein and that the terms and conditions contained herein shall apply to and bind the heirs, successors and assigns of the respective parties herein.

Tenth: That should the lessee occupy said premises after the expiration date of this lease, with the consent of the lessor, expressed or implied, such possession shall be construed to be a tenancy from month to month and said lessee shall pay said lessor the sum of \$ 300.00 per month for such period as said lessee may remain in possession thereof.

Eleventh: That said premises shall not be used by the lessee during the term of this lease for other than the repairing and servicing of automobiles and trucks.

Twelfth: That at the expiration of said term or the sooner determination thereof, the lessee shall peacefully quit and surrender possession of said premises in as good condition as reasonable use and wear thereof will permit.

Thirteenth: That all words used herein in the singular number shall include the plural and the present tense shall include the future and the masculine gender shall include the feminine and neuter.

Fourteenth: Lessor agrees immediately to repair all roof leaks over the demised premises, the best possible.

Fifteenth: Lessee may at his sole discretion terminate and cancel this lease together with the Option Period, together with the Option Period, by the giving of 30 days prior written notice.

IN WITNESS WHEREOF, the lessor and the lessee have executed this instrument as of the day and year first above written.

*W. A. ...*  
*Subscribed, Witnessed & Signed by*  
*...*

For more forms address California Real Estate Association, 440 Hayes St., San Francisco, California 94102.

LEASE TO

CALIFORNIA REAL ESTATE ASSOCIATION STANDARD FORM

This instrument, made the First day of April, A.D. 1971, between Duane Parking Garage, as Lessor, and ... as Lessee.

WITNESSETH that the lessor does by these presents, lease and demise unto the lessee all of the property situated in the County of Alameda, State of California, described as follows, to wit:

1432 Harrison Street: Being that portion of the ground floor of the building as follows: approximately 1000 sq. ft. of area consisting of 6 contiguous parking spaces on the N.E. side of the building including the wash stall, hydraulic hoist stall and the four contiguous stalls to the west, together with all utilities, fixtures and appliances therein.

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A. Yes.

Q. Do you know what types of painting he performed, whether spray painting?

A. It was all spot painting.

Q. Tell us what you mean.

A. He wasn't allowed to paint a full car. You would need a paint booth. So he would only spot paint.

Q. Did he do any spray painting?

A. It was all spray painting, of course.

Q. Did anybody on the property, among the subtenants we have listed, perform any auto repairs beyond Roy's body shop? By repairs, I mean engine work, transmission, any work of that type.

MR. TRINKLE: Mechanical work?

MR. MORRISON: Q. Mechanical work.

A. Other than the body shop, no.

Q. Leading aside the body shop, there was no servicing of engines, transmission, oil changes, lube jobs?

A. Nothing on premises that I can recall.

MR. MORRISON: I am going to show you next some collection of documents about these subtenants to see if that helps you recall any other activities that might have gone on on the property

1 besides what you have told us about so far. I am  
2 going to take one of these out of order and we will  
3 have this marked as Exhibit 61.

4 This is a message slip on the letterhead of  
5 Douglas Parking dated April 26, 1974. On the  
6 right-hand side appears to be the signature of  
7 Alvin Bacharach. On the left-hand side is a typed  
8 note with a signature that you can hopefully  
9 identify for us.

10 (Document more particularly  
11 described in the index marked  
12 for identification as Plaintiffs'  
13 Exhibit No. 61)

14 MR. MORRISON: Q. Have you had an  
15 opportunity to review the document marked as  
16 Exhibit 61?

17 A. Yes, sir.

18 Q. Is that your father's signature on the  
19 left-hand side?

20 A. Yes, it is.

21 Q. Note to Alvin Bacharach, "The mechanic  
22 who has been doing repair work for the last several  
23 months has asked us for a one year sublease with a  
24 one year option at the same rental as presently  
25 exists, in order that he may have some security.

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# JOUGLAS PARKING COMPANY

WEST STREET • OAKLAND, CALIFORNIA 94612 • PHONE 444-7352

## MESSAGE

TO [ Alvin H. Bacharach ]  
77 Jack London Square, Su. F  
Oakland, Calif. 94607 ]  
DATE April 26, 1974

Dear Al,

The mechanic who has been doing repair work for the last several months has asked us for a one year sub-lease with a one year option at the same rental as presently exists, in order that he may have some security. His interest is to be able to purchase some new equipment.

He is a good man and I would like to be able to keep him.

He occupies the lubrication rack and the spaces of four cars adjoining.

We ask your consideration with your written approval of same.

Thanks again,

*Stanford*

BY

MAIL ROOM

INSTRUCTIONS TO RECIPIENT

KEEP YELLOW COPY 2. SEND WHITE AND PINK COPIES WITH CARBON CONTACT

## REPLY

DATE April 26, 1974

4-27-74

OK

SIGNED

*Alvin H. Bacharach*

INSTRUCTIONS TO RECIPIENT

WHITE COPY 2. DETACH YOUR KEEP PINK COPY RETURN WHITE COPY TO SENDER

PL/DEPT EXHIBIT 61  
WIT: R. Douglas  
DATE: 7/1/92  
PEGGY TSUJIMOTO REPORTER

This Indenture, made the first day of April, A. D. 1981  
between Douglas Parking Company

and American International Rent a Car of Sacramento, hereinafter called the lessor,

hereinafter called the lessee,  
situated in the City of Oakland part of the property  
County of Alameda State of California, described as follows, to wit:

A portion of 1432 Harrison St., namely a portion of the main floor, including offices and automobile work areas (excludes aisle and wash rack), approximately 1348 sq.ft., one half of lower two (L2) approximately 2500 sq.ft., and the upper roof, approximately sq.ft.

Rent, for the main floor area shall be \$857 per month.  
Rent, " " one half L2" " " \$100 " "  
Rent " " upper roof " " " \$300 " "

for the term of Seven (7) years  
beginning April 1, 1981, and ending March 31, 1988  
for ~~the sum of~~ One thousand two hundred fifty seven dollars  
(\$1257.00) per month Dollars

in lawful money of the United States of America, payable as follows, to wit:  
The sum of \$1257 shall be due and payable on the 1st day of each month in advance. In addition, tenant shall pay one-half (1/2) of Lessor's electricity bill for 1432 Harrison St. in arrears within five (5) days of presentation of a true copy of said PGE bill. In addition, tenant shall pay \$1763 representing a security deposit. Security deposit shall be paid with the April, 1981 rent.

All of said rent shall be paid at the office of Douglas Parking Co.  
~~the lessor's office~~ 1721 Webster Street Oakland, Calif. 94612  
California, or at such other place as may be designated by the lessor.

IN ADDITION THERETO IT IS HEREBY AGREED AS FOLLOWS, TO WIT:

First: That the lessee shall pay the lessor said rent in the manner hereinbefore specified, and shall not let or underlet the whole or any part of said premises, nor sell or assign this lease, either voluntarily or by operation of law, nor allow said property to be occupied by anyone contrary to the terms hereof, without the written consent of the lessor;

Second: That should said rent be not paid when due or should the lessee default in any of the covenants or conditions contained herein, the lessor, or his representative or agent, may re-enter said premises and remove all persons therefrom;

Third: That the lessee shall occupy said demised premises and shall keep the same in good condition, including such improvements as may be made thereon hereafter, the usual wear and tear and damage by the elements excepted, and shall not make any alterations thereon without the written consent of the lessor and shall not commit or suffer to be committed any waste upon said premises;

Fourth: That said premises shall not be used by the lessee, nor anyone else, during the term hereof or any extension thereof, for the sale of any intoxicating liquors, nor for any illegal or immoral purpose, and that possession of said premises by the lessee or his successors or assigns shall not be construed as conveying any title thereto or ownership thereof;

Fifth: That all Governmental laws and ordinances shall be complied with by the lessee;

FILED DEPT EXHIBIT 62  
WIT: R. Douglas  
DATE: 7/1/82  
PEGGY TSUJIMOTO REPORTER

GENERAL FORM LEASE

1. PARTIES. This Lease, dated, for reference purposes only, APRIL 25, 19 77, is made by and between DOUGLAS MOTOR SERVICE (herein called "Landlord") and AMERICAN INTERNATIONAL RENT A CAR OF SACRAMENTO (herein called "Tenant")

2. PREMISES. Landlord hereby leases to Tenant and Tenant leases from Landlord for the term, at the rental, and upon all of the conditions set forth herein, that certain real property situated in the City of OAKLAND County of ALAMEDA State of CALIFORNIA, commonly known as A portion of 1432 Harrison Street as shown and described on drawing attached hereto and made a part hereof plus use of Vehicle Washing Facilities.

Said real property is herein called "the Premises".

3. TERM. 3.1 Term. The term of this Lease shall be for 3 Years and Eleven Months, commencing on May 1, 1977 and ending on March 31, 1981 unless sooner terminated pursuant to any provision hereof.

3.2 Delay in Commencement. Notwithstanding said commencement date, if for any reason Landlord cannot deliver possession of the Premises to Tenant on said date, Landlord shall not be subject to any liability therefor, nor shall such failure effect the validity of this Lease or the obligations of Tenant hereunder or extend the term hereof, but in such case Tenant shall not be obligated to pay rent until possession of the Premises is tendered to Tenant; provided, however, that if Landlord shall not have delivered possession of the Premises within ninety (90) days from said commencement date, Tenant may, at Tenant's option, by notice in writing to Landlord, cancel this Lease. If Landlord shall not have delivered possession of the Premises within one (1) year from said commencement date, Landlord may, by notice in writing to the Tenant within ten (10) days thereafter, cancel the Lease. If either party cancels as hereinabove provided, Landlord shall return any monies previously deposited by Tenant and the parties shall be discharged from all obligations hereunder.

3.3 Early Possession. In the event that Landlord shall permit Tenant to occupy the Premises prior to the commencement date of the term, such occupancy shall be subject to all of the provisions of this Lease. Said early possession shall not advance the termination date of this Lease.

4. RENT. Tenant shall pay to Landlord as rent for the Premises equal monthly installments of FOUR HUNDRED AND NO/100 - - - - - \$ 400.00 Dollars, in advance, on the first day of each month

of the term hereof. Tenant shall pay Landlord upon the execution hereof the sum of EIGHT HUNDRED AND NO/100 - - - - - \$ 800.00 Dollars as rent for May, 1977 and March, 1981

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable without notice or demand and without any deduction, offset, or abatement in lawful money of the United States of America to Landlord at the address stated herein or to such other person or at such other place as Landlord may designate in writing.

5. SECURITY DEPOSIT. Tenant shall deposit with Landlord upon execution hereof the sum of None - - - - - \$ \_\_\_\_\_ Dollars as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount hereinabove stated and Tenant's failure to do so shall be a breach of this Lease, and Landlord may at his option terminate this Lease. Landlord shall not be required to keep said deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, said deposit or so much thereof as has not theretofore been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) within fifteen (15) days after the expiration of the term hereof, or after Tenant has vacated the Premises, whichever is later.

6. USE. 6.1 Use. The Premises shall be used and occupied only for Automobile Rental Storage and Repair of Lessees own Vehicles

6.2 Compliance with Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders and requirements in effect during the term or any part of the term hereof regarding the use by Tenant of the Premises. Tenant shall not use or permit the use of the Premises in any manner that will tend to create noise or a nuisance, or, if there shall be more than one tenant of the Building containing the Premises, which shall tend to unreasonably disturb such other tenants.

6.3 Condition of Premises. Tenant hereby accepts the Premises in their condition existing as of the date of the possession hereunder, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters discussed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business.

6.4 Insurance Cancellation. Notwithstanding the provisions of Article 6.1 hereinabove, no use shall be made or permitted to be made of the Premises nor use done which will cause the cancellation of any insurance policy covering said Premises or any

EXHIBIT 63  
BY: R. Douglas  
DATE: 7/1/67  
PEGGY TOMMOTO REPORTER

building of which the Premises may be a part, and if Tenant's use of the Premises causes an increase in said insurance rates Tenant shall pay any such increase.

**6.5 Landlord's Rules and Regulations.** Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate. Landlord reserves the right from time to time to make reasonable modifications to said rules and regulations. The additions and modifications to those rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any of said rules and regulations by any other tenants or occupants.

## 7. MAINTENANCE, REPAIRS AND ALTERATIONS.

**7.1 Landlord's Obligations.** Subject to the provisions of Article 9, and except for damage caused by any negligent or intentional act or omission of Tenant, Tenant's agents, employees, or invitees, Landlord, at Landlord's expense, shall keep in good order, condition and repair the foundations, exterior walls and exterior roof of the Premises. Landlord shall not, however, be obligated to paint such exterior, nor shall Landlord be required to maintain the interior surface of exterior walls, windows, doors or plate glass and store front. Landlord shall have no obligation to make repairs under this Article 7.1 until a reasonable time after receipt of written notice of the need for such repairs. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

**7.2 Tenant's Obligations.** Subject to the provisions of Article 7.1 and Article 9, Tenant, at Tenant's expense, shall keep in good order, condition and repair the Premises and every part thereof (regardless of whether the damaged portion of the Premises or the means of repairing the same are accessible to Tenant), including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning (if there is air conditioning), Tenant shall obtain a service contract for the maintenance and repairs on said Premises), ventilating, electrical and lighting facilities and equipment within the Premises, fixtures, interior walls and store front, ceilings, windows, doors, plate glass, and skylights, located within the Premises and all sidewalks, landscaping, driveways, parking lots, fences and signs located in the areas which are adjacent to the Premises.

**7.3 Surrender.** On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the Premises occasioned by its use thereof, or by the removal of Tenant's trade fixtures, furnishings and equipment pursuant to Article 7.3, which repair shall include the patching and filling of holes and repair of structural damage.

**7.4 Landlord's Rights.** If Tenant fails to perform Tenant's obligations under this Article 7, Landlord may at its option (but shall not be required to) enter upon the Premises, after ten (10) days' prior written notice to Tenant, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the rate of ten (10%) percent per annum shall become due and payable as additional rental to Landlord together with Tenant's next rental installment.

### 7.5 Alterations and Additions.

(a) Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions or repairs in, on, or about the Premises, except for work not exceeding \$1,000 in cost. As a condition to giving such consent, Landlord may require that Tenant remove any such alterations, improvements, additions or utility installations at the expiration of the term, and to restore the Premises to their prior condition.

(b) Before commencing any work relating to alterations, additions and improvements affecting the Premises, Tenant shall notify Landlord in writing of the expected date of commencement thereof. Landlord shall then have the right at any time and from time to time to post and maintain on the Premises such notices as Landlord reasonably deems necessary to protect the Premises and Landlord from mechanics' liens, materialmen's liens or any other liens. In any event, Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Premises. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or to Tenant's agents or contractors in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction of Tenant.

(c) Unless Landlord requires their removal, as set forth in Article 7.5(a), all alterations, improvements or additions which may be made on the Premises, shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Article 7.5(c), Tenant's machinery, equipment and trade fixtures, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Article 7.3.

## 8. INSURANCE; INDEMNITY.

**8.1 Liability Insurance.** The Tenant shall obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in an amount of not less than \$300,000 for injury to or death of one person in any one accident or occurrence and in an amount of not less than \$500,000 for injury to or death of more than one person in any one accident or occurrence. Such insurance shall further insure Landlord and Tenant against liability for injury to or death of more than one person in any one accident or occurrence. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least \$50,000. The limits of said insurance shall not, however, limit the liability of the liability endorsement attached thereto. If the Tenant shall fail to procure and maintain said insurance the Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Tenant.

**8.2 Waiver of Subrogation.** Tenant and Landlord each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage.

**8.3 Hold Harmless.** Tenant shall indemnify, defend and hold Landlord harmless from any and all claims arising from Tenant's use of the Premises or from the product of its business or from any activity, work or things which may be permitted or suffered by Tenant in or about the Premises and shall further indemnify, defend and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, excepting where said damage arises out of negligence of Landlord.

**8.4 Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises; nor, unless through its negligence, shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors and invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Landlord or Tenant. Landlord shall not be liable for any damage arising from any act or neglect of any other tenant, if any, of the building in which the Premises are located.

## 9. DAMAGE OR DESTRUCTION.

**9.1 Partial Damage - Insured.** If the Premises are damaged and such damage was caused by a casualty covered under an insurance policy, Landlord shall at Landlord's expense repair such damage as soon as reasonably possible and this Lease shall continue

in full force and effect. Notwithstanding the above, if the Tenant is the insuring party and if the insurance proceeds received by Landlord are not sufficient to effect such repair, Landlord shall give notice to Tenant of the amount required in addition to the insurance proceeds to effect such repair. Tenant may, at Tenant's option, contribute the required amount, but upon failure to do so within thirty (30) days following such notice, Landlord's sole remedy shall be, at Landlord's option and with no liability to Tenant, to cancel and terminate this Lease. If Tenant shall contribute such amount to Landlord within said thirty (30) day period, Landlord shall make such repairs as soon as reasonably possible and this Lease shall continue in full force and effect. Tenant shall in no event have any right to reimbursement for any such amount so contributed.

**9.2 Damage - Uninsured.** In the event the Premises may be damaged or destroyed by a casualty which is not covered by fire and extended coverage insurance carried by Landlord, then Landlord shall restore same, provided that if the damage or destruction is to an extent greater than ten (10%) per cent of the then replacement cost of improvements on the Premises (exclusive of Tenant's trade fixtures and equipment and exclusive of foundations) then Landlord may elect not to restore and to terminate this Lease. Landlord must give Tenant written notice of its election not to restore within thirty (30) days from the date of damage and, if not given, Landlord shall be deemed to have elected to restore and in such event shall repair any damage as soon as reasonably possible. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage or Tenant's expense, without reimbursement from Landlord, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such ten (10) day period, this Lease shall be canceled and terminated as of the date of the occurrence of such damage.

**9.3 Total Destruction.** If at any time during the term hereof the Premises are totally destroyed from any cause whether or not covered by the insurance required to be maintained by Landlord pursuant to Article 8.3 (including any total destruction required by any authorized public authority) this Lease shall automatically terminate as of the date of such total destruction.

**9.4 Damage Near End of Term.** If the Premises are partially destroyed or damaged during the last twelve (12) months of the term of this Lease, Landlord may, at Landlord's option, cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.

**9.5 Abatement of Rent.**

(a) If the Premises are partially destroyed or damaged and Landlord or Tenant repairs or restores them pursuant to the provisions of this Article 9, the rent payable hereunder for the period during which such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's reasonable use of the Premises is impaired. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

(b) If Landlord shall be obligated to repair or restore the Premises under the provisions of this Article 9 and shall not commence such repair or restoration within ninety (90) days after such obligations shall accrue, Tenant may at Tenant's option cancel and terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice. Any abatement in rent shall be computed as provided in Article 9.5(a).

**10. REAL PROPERTY TAXES.**

**10.1 Payment of Taxes.** Landlord shall pay all real property taxes levied on the Premises. Tenant shall pay each year of the term hereof in addition to rent, the amount, if any, by which real property taxes applicable to the Premises increase over the fiscal tax year in which term commences. Such payments shall be made by Tenant within thirty (30) days after receipt of Landlord's written statement setting forth the amount of such increase and the computation thereof. If the term of this Lease shall not expire concurrently with the expiration of the fiscal tax year, Tenant's liability for increased taxes for the last partial lease year shall be prorated on an annual basis.

**10.2 Definition of "Real Property" Taxes.** As used herein, the term "real property tax" shall include any form of assessment, license fee, rent tax, levy, penalty, or tax (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or Federal government, or any school, agricultural, lighting, drainage or other improvement district thereof, as against any legal or equitable interests of Landlord in the Premises or in the real property of which the Premises are a part, as against Landlord's right to rent or other income therefrom, or as against Landlord's business of leasing the Premises, and Tenant shall pay any and all charges and fees which may be imposed by the EPA or other similar government regulations or authorities.

**10.3 Joint Assessment.** If the Premises are not separately assessed, Tenant's liability shall be its pro-rata share of the assessment of real property taxes levied on the Premises and improvements included with the real property assessed.

**10.4 Personal Property Taxes.**

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

**10.5 Notwithstanding the provisions of Article 10 hereinafter, Tenant shall pay any and all "real property taxes" levied upon city and all improvements of buildings, structures, fixtures, equipment, machinery, and other improvements included with the real property of Landlord or Tenant, except those taxes included with the real property of Landlord.**

**11. UTILITIES.** Tenant shall pay for all water, gas, heat, light, power, telephone, mail, and other utility and services supplied to the Premises together with any taxes thereon, if any such services are not separately assessed as Tenant's taxes. Tenant shall pay all other charges and fees which may be imposed by Landlord or other persons, except those taxes and charges which are included with the real property of Landlord or Tenant.

**12. ASSIGNMENT AND SUBLETTING.**

**12.1 Landlord's Consent Reserved.** Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent, which Landlord shall not unreasonably withhold. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of the Lease. Any transfer of Tenant's interest in this Lease or in the Premises from Tenant by merger, consolidation, or liquidation, or by any subsequent change in the ownership of thirty (30%) percent or more of the capital stock of Tenant shall be deemed a prohibited assignment within the meaning of this Article 12.

**12.2 No Release of Tenant.** Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the term of this Lease. The assignment of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

**13. DEFAULTS; REMEDIES.**

**13.1 Defaults.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) The vacating or abandonment of the Premises by Tenant.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, so and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant.

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Tenant of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

**13.2 Remedies in Default.** In the event of any such default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises, expenses of retaking, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid, the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; and that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease. Unpaid installments of rent or other sums shall bear interest from the date due at the maximum rate permissible under state law but in no event shall it exceed 10%. In the event Tenant shall have abandoned the Premises, Landlord shall have the option of (i) retaking possession of the Premises and recovering from Tenant the amount specified in this Article 13.2(a), or (ii) proceeding under Article 13.2(b).

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Premises are located.

**13.3 Default by Landlord.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**14. CONDEMNATION.** If the Premises or any portion thereof are taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (all of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If more than twenty-five (25%) percent of the floor area of any buildings on the Premises, or more than twenty-five (25%) percent of the land area of the Premises not covered with buildings, is taken by condemnation, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes possession by notice in writing of such election within twenty (20) days after Landlord shall have notified Tenant of the taking or, in the absence of such notice, then within twenty (20) days after the condemning authority shall have taken possession.

If this Lease is not terminated by either Landlord or Tenant then it shall remain in full force and effect as to the portion of the Premises remaining, provided the rental shall be reduced in proportion to the floor area of the buildings taken within the Premises as bears to the total floor area of all buildings located on the Premises. In the event this Lease is not so terminated then Landlord agrees, at Landlord's sole cost, to as soon as reasonably possible restore the Premises to a complete unit of like quality and character as existed prior to the condemnation. All awards for the taking of any part of the Premises or any payment made under the threat of the exercise of power of eminent domain shall be the property of Landlord, whether made as compensation for diminution of value of the leasehold or for the taking of the fee or severance damages; provided, however, that Tenant shall be entitled to any award for loss of or damage to Tenant's trade fixtures and removable personal property.

## 15. GENERAL PROVISIONS.

### 15.1 Offset Statement.

(a) Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent, security deposit, and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any unsecured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Tenant's failure to deliver such statement within such time shall be deemed a default on Tenant's part that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no unsecured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance.

(c) If Landlord desires to finance or refinance the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statements shall include the past three (3) years' financial statements of Tenant. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

**15.2 Landlord's Interest.** The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title or a tenant's interest in a ground lease of the Premises. In the event of any transfer of such title or interest, Landlord herein named (and in case of any subsequent transfer the then grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations hereunder to be performed, provided that any funds in the hands of Landlord or the then grantor as the date of such transfer, at which Tenant has an interest, shall be delivered to the grantor. The obligations mentioned in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

**15.3 Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**15.4 Title of Sections.** Title is of the essence.

**15.5 Captions.** Article and paragraph captions are not a part hereof.

**15.6 Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

**15.7 Waiver.** No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed

19. Lessee shall have the right to purchase gasoline from the sub-Lessor at a price five cents (.05) above sub-Lessor's cost. Lessee shall service his own vehicles.

20. Within sixty (60) days prior to expiration of this sub-lease, Lessee shall have the option to renew this sub-lease for the same time period as sub-Lessor may obtain from Lessor. Any increase in the monthly rental shall be predicated on the percentage increase to be paid by sub-Lessor plus the percentage increase in taxes paid by Sub-Lessor over the base period 1976/77. If Lessee exercises his option, he will, within thirty (30) days of said option date, have installed and pay for any cost thereof, a separate electrical meter so that the electricity used by Lessee can be measured and paid for by Lessee. ~~Until 1978, Lessee shall pay monthly, in addition to rent, the increase in the electricity bill over the average of the electricity bills for the previous twelve (12) months.~~ This option is valid only on the condition that both Lessee and Sub-Lessor can maintain a compatible operation wherein Sub-Lessor is able to operate his business in a peaceful and businesslike manner.

RCB  
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PSB

to render unnecessary the obtaining of Landlord's consent. Approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any provision hereof, other than the failure of rent to be paid by Tenant to any the particular rent so accepted, regardless of Landlord's knowledge of such breach at the time of acceptance of such rent.

**15.8 Remedies.** Tenant shall not re-let this Lease. Any such re-letting shall be a breach under this Lease.

**15.9 Holding Over.** If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof with the consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly rental plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancy.

**15.10 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**15.11 Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

**15.12 Binding Effect: Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by Tenant and subject to the provisions of Article 15.2, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Premises are located.

**15.13 Subordination.**

(a) This Lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and as long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless the Lease is otherwise terminated pursuant to its terms. If any mortgage, trustee or ground lessor shall elect to have this Lease prior to the filing of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is closed prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Tenant agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the filing of any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney in fact and in Tenant's name, place and name, to do so.

**15.14 Attorney's Fees.** If either party named herein brings an action to enforce the terms hereof or declares rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court.

**15.15 Landlord's Access.** Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, or lenders, and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as Landlord may deem necessary or desirable. Landlord may at any time place on or about the Premises any ordinary "For Sale" signs and Landlord may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Sale or Lease" signs, all without rebate of rent or liability to Tenant.

**15.16 Auctions.** Tenant shall not place any auction sign upon the Premises or conduct any auction thereon without Landlord's prior written consent.

**15.17 Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subleases.

**15.18 Corporate Authority.** If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

**15.19 Landlord's Liability.** If Landlord is a limited partnership, the liability of the partners of the Landlord pursuant to this Lease shall be limited to the assets of the partnership; and Tenant, its successors and assigns hereby waives all rights to proceed against any of the partners, or the officers, shareholders, or directors of any corporate partner of Landlord except to the extent of their interest in the partnership. The term "Landlord", as used in this Article, shall mean only the owner or owners at the time of their interest in a ground lease of the Premises, and in the event of any transfer of such title or interest, Landlord herein named (and in case of any subsequent transfers to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

**16. PERFORMANCE BOND.** At any time Tenant either desires to or is required to make any repairs, alterations, additions, improvements or utility installation thereon, pursuant to Articles 7.5 or 8.3 herein, or otherwise, Landlord may at his sole option require Tenant, at Tenant's sole cost and expense, to obtain and provide to Landlord a lien and completion bond in an amount equal to one and one-half (1 1/2) times the estimated cost of such improvements, to insure Landlord against liability for mechanic's and materialmen's liens and to insure the completion of the work.

**17. BROKERS.** The parties hereto acknowledge that IRVINE COMPANY were the real estate brokers that represented the parties herein, and that no other commissions are due to any brokers whatsoever, other than the above-named brokers.

**18. NOTICE.** Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally or sent by United States mail, postage prepaid, addressed at the address set forth hereinafter:

To Landlord at: 1432 HARRISON STREET

OAKLAND, CALIFORNIA 94612

To Tenant at: 1432 HARRISON STREET

OAKLAND, CALIFORNIA 94612



The parties hereto have executed this Lease at the place and on the date specified immediately adjacent to their respective signatures.

Executed at OAKLAND, CALIFORNIA  
on APRIL 26, 1977

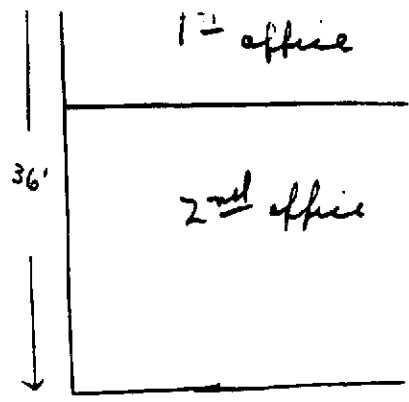
By DOUGLAS MOTOR SERVICE,  
By Paul S. Douglas  
"LANDLORD"

Executed at OAKLAND, CALIFORNIA  
on APRIL 26, 1977

Robert E. Lust  
By AMERICAN INTERNATIONAL  
RENT-A-CAR OF SACRAMENTO, INC.  
By ROBERT E. LUST, PRES.  
"TENANT"

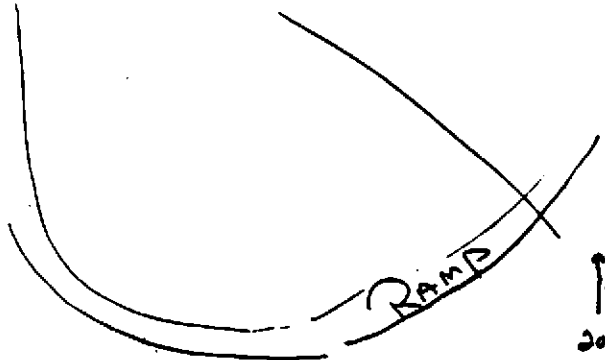
If this Lease has been filed in it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Lease or the transaction relating thereto.

□  
□ ← gas Pumps

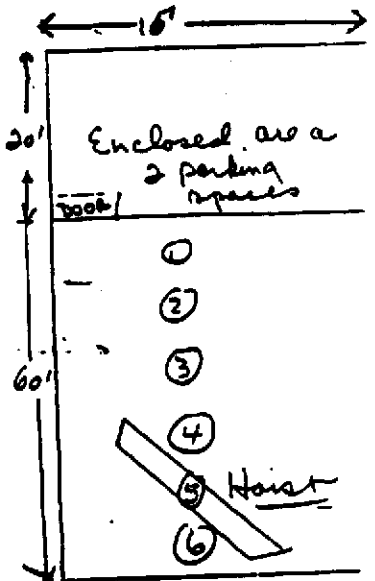
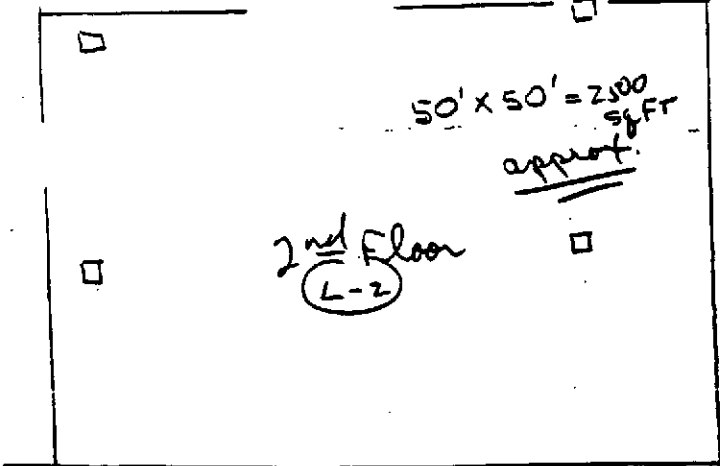


Main Floor

~~This area not included~~



(2<sup>nd</sup>)



~~This area not included~~

THIS DRAWING IS A REPRESENTATION OF THE PROVISIONS OF ARTICLE 6.1 HEREIN, AND NO USE SHALL BE MADE OR REFERRED TO BE MADE OF THE PROVISIONS FOR AND ABOVE WHICH WILL CAUSE THE CANCELLATION OF ANY INSURANCE POLICY COVERING SAID PROVISIONS OR ANY

1 a moment?

2 A. Okay.

3 Q. When you were at the Harrison Street  
4 Garage, did you review any of the subleases that  
5 Douglas had with subtenants for the property?

6 A. Yes.

7 Q. Did you review all of them as a matter of  
8 practice?

9 A. Not necessarily, no.

10 Q. This particular document that we have  
11 marked as Exhibit 62 is a lease for American  
12 International Rent A Car. It describes certain  
13 areas where this company is going to have a right  
14 to use the property. It says in part, quote, "A  
15 portion of 1432 Harrison Street, namely a portion  
16 of the main floor, including offices and automobile  
17 work areas."

18 Do you know why work areas is referred to if  
19 American International was not performing any work  
20 on the property?

21 MR. TRINKLE: I am going to object as  
22 potentially vague and ambiguous only for the reason  
23 that this particular document is not signed by  
24 anybody.

25 MR. MORRISON: Q. I understand. Was there

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1 a sublease with American International that was  
2 signed?

3 A. There was a sublease with them. Whether  
4 it was written or not, it looks like it is written,  
5 but I don't see where Bob Lust was the owner, but  
6 as you are probably well aware, leases don't mean  
7 anything. So this could be nothing. Whether it is  
8 signed or not doesn't make any difference, but they  
9 were there and they were leasing a share and they  
10 were leasing this area here which is fine.

11 Q. I am focusing on the language "automobile  
12 work areas." Do you have any understanding as to  
13 why that description was used even in a draft even  
14 if that wasn't signed?

15 A. The reason why he probably put that down  
16 is because this area does look like it could be a  
17 work section. It has a lift there and it has got  
18 other -- looks like it could be a work area. So  
19 that is why he wanted to distinguish it between the  
20 rest of the garage. He didn't want them to think  
21 they were on this side.

22 He wanted to let them know this was  
23 specifically a work area because it has been used  
24 as a work area, washing, waxing cars or could even  
25 mount a tire -- no, he couldn't do that. So that

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1           A.    Yes.

2           Q.    Do you know what types of painting he  
3 performed, whether spray painting?

4           A.    It was all spot painting.

5           Q.    Tell us what you mean.

6           A.    He wasn't allowed to paint a full car.  
7 You would need a paint booth.  So he would only  
8 spot paint.

9           Q.    Did he do any spray painting?

10          A.    It was all spray painting, of course.

11          Q.    Did anybody on the property, among the  
12 subtenants we have listed, perform any auto repairs  
13 beyond Roy's body shop?  By repairs, I mean engine  
14 work, transmission, any work of that type.

15          MR. TRINKLE:    Mechanical work?

16          MR. MORRISON:    Q.    Mechanical work.

17          A.    Other than the body shop, no.

18          Q.    Leading aside the body shop, there was no  
19 servicing of engines, transmission, oil changes,  
20 lube jobs?

21          A.    Nothing on premises that I can recall.

22          MR. MORRISON:    I am going to show you next  
23 some collection of documents about these subtenants  
24 to see if that helps you recall any other  
25 activities that might have gone on on the property

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Q. And Ron?

A. Ronald Douglas, right.

Q. So that was just -- was that an informal partnership or formal partnership?

A. Formal partnership.

Q. One of the things it was doing at some point in time was renting out cars?

A. Right.

Q. At any time while you worked for Douglas, do you have any recollection of any automotive maintenance activity at the Harrison Street garage?

A. I am not quite sure what you mean. Certainly not what we did on Webster Street.

Q. I am talking about -- let's break it down. I take it then that Douglas never did any automotive maintenance work at the Harrison Street garage?

A. That is correct.

Q. How about tenants?

A. The only one that we could -- that I can recall would be the American Rent A Car that you just mentioned and they did some maintenance on the vehicles, yes.

Q. That was the site where they did the maintenance on their --

1           A.    I don't know if it was the site, but it  
2 was a site.

3           Q.    What kind of things did they do?

4           A.    They adjusted carburetors. They changed  
5 spark plugs, maybe made adjustments in rear view  
6 mirrors or side-view mirrors or replaced tail light  
7 lenses.

8           Q.    Changed oil?

9           A.    No.

10          Q.    How about change transmission fluid or  
11 brake fluid?

12          A.    No.

13          Q.    How do you know they didn't do that  
14 there?

15          A.    Because it was kind of a laughing matter  
16 with us. We were, first off, in the mechanical  
17 business on Webster Street. We do what was  
18 involved in mechanical repairs. Second off, at the  
19 time we were also renting cars at our facility.  
20 LDR was at our airport facility, and since we were  
21 in the same business as American Rent A Car, it was  
22 kind of a laughing matter when they said they were  
23 maintaining cars versus what we consider  
24 maintaining cars. And we know that they didn't do  
25 what we did.

1 writing?

2 A. No, that is Debbie's writing and I did  
3 sign it. We did pass those out. I do remember  
4 that.

5 Q. Do you remember approximately what time  
6 period these documents were passed out?

7 A. No, I really don't. It was the time she  
8 was there, during the time she was there, during  
9 that time frame she was there, probably four to  
10 five years. So it was sometime during that time  
11 that she made those up and I signed them and we  
12 passed them out to our customers to generate new  
13 business.

14 Q. This was a marketing device?

15 A. Right.

16 Q. The idea was to list the services that  
17 were offered at the Harrison Street Garage?

18 A. Right. Let me see that again. I said  
19 complete auto service facilities on premises. That  
20 doesn't mean anything. If anything came in, I  
21 would take them over to D.M.S.

22 Q. What was D.M.S.?

23 A. Douglas Motor Service.

24 Q. You would send it over to Webster Street?

25 A. Yes. We didn't do anything.



1 and Douglas Parking. Then just beneath the heading  
2 it says "complete systematized automotive repair."

3 A. Right.

4 Q. "Batteries, carburetor and electrical  
5 experts, wheel aligning, brake service, body  
6 building, Oakland." It has 1721 Webster in the  
7 left-hand side. Were any of these services offered  
8 at the Harrison Street Garage?

9 A. All offered there.

10 MR. TRINKLE: The Harrison Street Garage?

11 A. We offered that to everybody. We said  
12 any time they needed anything like that, they can  
13 bring it to us and we could take care of it. That  
14 is called sublet.

15 MR. MORRISON: Q. Customers could obtain  
16 this service at the Harrison Street Garage?

17 A. Right.

18 Q. But it was sublet to somebody else?

19 A. Sublet to Douglas Motor Service. That is  
20 why that letter is on there because I wanted to let  
21 them know we would take care of them. I didn't  
22 want them to think we are taking the car off the  
23 property. That wasn't exactly too legit, so I said  
24 as far as they are concerned, we did it on the  
25 property. It just so happens I drove it two blocks

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1 His interest is to be able to purchase some new  
2 equipment. He is a good man and I would like to be  
3 able to keep him. He occupies the lubrication rack  
4 and the spaces of four cars adjoining. We ask your  
5 consideration with written approval of same."

6 Do you know who this mechanic is that is  
7 referred to in this note?

8 A. No, I don't. It was prior to my coming  
9 in there, but I don't have the slightest idea, if  
10 at all.

11 Q. The mechanic who has been doing repair  
12 work for the last several months, was it news to  
13 you that the mechanic was doing repair work?

14 A. That is my father's way of conducting  
15 business, and whether or not he was there, I don't  
16 know. I do not recall a mechanic being on the  
17 premises.

18 Q. You don't have any -- since you weren't  
19 there at that time, though, you don't know whether  
20 or not --

21 A. The thing is I wasn't there at the time,  
22 no.

23 Q. Do you have any reason to think that your  
24 dad was wrong in saying that there was a mechanic  
25 who had been doing repair work for the last several

1 months?

2 A. Yes.

3 Q. Why?

4 A. That is the way -- I told you that is the  
5 way sometimes he does business. If he wants  
6 something done, he pushes things along and he may  
7 stretch the truth a little bit, but I don't know  
8 why. I have seen this before. I mean not at this  
9 time, but I saw it lately and I don't remember. I  
10 don't remember a mechanic being on that premises.

11 Q. I understand that.

12 A. I really don't.

13 Q. I understand what you remember. I am  
14 asking you about what your dad's practice was.

15 A. His practice could have been that he  
16 was -- I don't know. In this case I don't know  
17 what it is because I don't see what purpose it  
18 would serve.

19 Q. Is it your understanding that what he is  
20 doing here is asking Bacharach's permission for a  
21 sublease?

22 A. That is my understanding that is what it  
23 calls for on here.

24 Q. If he is asking Bacharach's permission  
25 for this man to have a sublease, what reason would

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1 your dad have for misrepresenting it?

2 A. I can't understand it. I don't know why  
3 he would do it, if it wasn't the truth. There is  
4 nothing -- no purpose in mind.

5 Q. Other than your own recollection --

6 A. I can't see it.

7 Q. Listen to the question. Other than your  
8 own recollection that nobody was doing mechanical  
9 work when you were there, do you have any  
10 information indicating that your dad was wrong in  
11 stating that a man before you were there was doing  
12 mechanical work?

13 A. It is possible, but I don't recall. I do  
14 not recall.

15 MR. MORRISON: Let's look at some of these  
16 other documents that we are going to mark as  
17 exhibits. Next one I will show you is entitled  
18 Lease California Real Estate Association Standard  
19 Form dated April 1, 1981. We will mark that as  
20 Exhibit 62.

21 (Document more particularly  
22 described in the index marked  
23 for identification as Plaintiffs'  
24 Exhibit No. 62)

25 MR. MORRISON: Q. Would you review that for

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1 there, just one space on the wash rack plus an  
2 office right here.

3 Q. Where was American International Rent A  
4 Car's space?

5 A. Same places, there and there.

6 Q. How did it come about that they could  
7 both occupy the same place?

8 A. They weren't there at the same time.

9 Q. What period of time did Thrifty -- what  
10 do you remember the time period being for Thrifty's  
11 use of that area?

12 A. You had asked me that and I didn't know  
13 the answer to when they were there. I forgot  
14 whether they were there before or after American  
15 International. They were there after American  
16 International.

17 Q. So American International used  
18 approximately the same area?

19 A. It was the same area and then Thrifty  
20 came in there after that.

21 Q. Did American do any servicing of vehicles  
22 on the premises?

23 A. No.

24 Q. Did Thrifty slash LDR do any servicing of  
25 the vehicles on the premises?

1 A. No.

2 Q. Where was Trimline Molding's operation?

3 A. Right here.

4 Q. Same area?

5 A. Just a second. Same area right here.

6 Q. In the wash rack area in the adjacent  
7 spaces?

8 A. Not on the wash rack but this side of it.

9 Q. When you refer to the wash rack, tell us  
10 what you mean by that.

11 A. Just an area that is designated with your  
12 overhead lines and just where you can wash a car  
13 and there is a sump that the water runs down and  
14 people would want their cars washed, normal  
15 procedure, and that was it. It was sort of off to  
16 the side, you know, and that is where they washed  
17 them right there.

18 Q. How much space did Trimline occupy?

19 A. It was the same area.

20 Q. Same area?

21 A. Yes, approximately.

22 Q. Seven or eight spaces?

23 A. There plus an office there.

24 Q. It is your testimony that these three  
25 operations, Thrifty, American and Trimline, were



1 not operating simultaneously?

2 A. They were not simultaneous. There  
3 wouldn't be any room for them.

4 Q. Did Thrifty wash cars in the wash rack  
5 area?

6 A. Yes.

7 Q. Likewise, American did?

8 A. Yes.

9 Q. And Trimline performed work in that same  
10 area?

11 A. Yes.

12 Q. You mentioned a sump. What is the sump  
13 you are referring to?

14 A. Catches the water and takes it off to the  
15 gutter, supposedly so it doesn't accumulate, of  
16 course.

17 Q. Where was the sump located?

18 A. In the center of the wash rack with the  
19 slight downgrade so the water would just go down  
20 the sump.

21 Q. When you say the center of the wash rack,  
22 was there a physical rack or hoist of some sort in  
23 that area?

24 A. I believe that there is a hoist there.  
25 It is not operational, but I believe there is one

1 there or was one there and the sump was  
2 approximately in that area. I don't remember  
3 exactly where it was, but there was one there with  
4 a steel grate over it. There is a lift there.

5 Q. You said the lift was non-operational?

6 A. Right.

7 Q. Did you ever try to operate it?

8 A. No, non-operational, nothing. I didn't  
9 try because it was -- there is nothing to try.  
10 They didn't have any levers to pull it. So there  
11 was no way. It would be impossible.

12 Q. This grate that you have described, was  
13 it located in one of the parking spaces?

14 A. No, it is inside the wash rack where the  
15 wash rack is. The wash rack had a space for one  
16 car. The sump that is covered with the grate is  
17 right down the center of it.

18 Q. Do you know where that sump drained to?

19 A. Yes, drained -- I am not sure. I didn't  
20 follow the water but supposed to have drained --  
21 never drained into the garage, so it must have gone  
22 some place. It had to go into the line on Alice  
23 Street or on Harrison Street. I don't know exactly  
24 where it went. I never followed it.

25 Q. It was your understanding it went to some

1 Q. I want to direct your attention to some  
2 language in some of these American International  
3 sublease documents we have been looking at. If you  
4 look in Exhibit 63 at the portion of paragraph 19  
5 that I have highlighted, it says "lessee shall  
6 service his own vehicles."

7 Does that help you recall whether American  
8 International performed any servicing of their own  
9 vehicles at the Harrison Street Garage?

10 A. No, they did not. They didn't service --  
11 they didn't service any of their cars. They never  
12 changed oil.

13 Q. Do you know why that language was  
14 included in the sublease then?

15 A. In the sublease?

16 Q. Yes.

17 A. I guess he wanted -- I guess Robert Lust  
18 wanted to be able to service his cars if need be.  
19 He wanted that permission to be able to do it. He  
20 didn't want to be held back. He wanted to be able  
21 to service them.

22 Q. Do you know whether or not American  
23 International performed any servicing of cars after  
24 you left the premises as the physical on-site  
25 manager?

1 sure of that.

2 Q. Let me refer you to another passage in  
3 one of these documents. This is Exhibit 62 and if  
4 you look at the paragraph number Eleventh on the  
5 second page it says, quote, "The said premises  
6 shall not be used by lessee during the term of this  
7 lease for other than automobile rental plus  
8 repaid" --

9 A. I think it is prepaid.

10 Q. -- "and storage of own vehicles." Do you  
11 believe that is -- couldn't that be repair rather  
12 than repaid? Does that make any sense?

13 A. What is this now? This is April 1981.  
14 This is with American. This is a lease, right?

15 Q. (Nods head) To make sense, that would  
16 have to be repair?

17 A. I don't know. You could be right. I  
18 don't know for sure. Automobile rental plus --  
19 yes, must be repair.

20 Q. You have seen various references to work  
21 areas, servicing, repairs. Is it still your  
22 testimony, Ron, that American International did not  
23 do any auto servicing or repairs at the premises  
24 when you were there?

25 A. When I was there as far as -- to the best

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1 of my recollection, they did not do any type of  
2 repairs other than minor stuff like I mentioned  
3 before.

4 Q. Windshield wiper blades?

5 A. You know, bulbs and maybe tire repair and  
6 that is it, but that is all. That is all they  
7 did.

8 MR. MORRISON: Let's mark as the exhibit next  
9 in order an April 21, 1981 document on the  
10 letterhead of Douglas Parking addressed to Robert  
11 Lust at American International.

12 (Document more particularly  
13 described in the index marked  
14 for identification as Plaintiffs'  
15 Exhibit No. 65)

16 MR. MORRISON: Q. Have you seen that  
17 document before, Ron?

18 A. Yes, I think I have, possibly.

19 Q. Is that your dad's signature on the  
20 letter?

21 A. No, my brother Lee's signature.

22 Q. This letter indicates that American  
23 International has given 90 days notice and is going  
24 to vacate the premises on August 1, 1981. Is that  
25 consistent with your recollection of when they

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1       sure of that.

2               Q.     Let me refer you to another passage in  
3       one of these documents. This is Exhibit 62 and if  
4       you look at the paragraph number Eleventh on the  
5       second page it says, quote, "The said premises  
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7       lease for other than automobile rental plus  
8       repaid" --

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12       than repaid? Does that make any sense?

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14       This is with American. This is a lease, right?

15              Q.     (Nods head) To make sense, that would  
16       have to be repair?

17              A.     I don't know. You could be right. I  
18       don't know for sure. Automobile rental plus --  
19       yes, must be repair.

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21       areas, servicing, repairs. Is it still your  
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174

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14 for identification as Plaintiffs'  
15 Exhibit No. 65)

16 MR. MORRISON: Q. Have you seen that  
17 document before, Ron?

18 A. Yes, I think I have, possibly.

19 Q. Is that your dad's signature on the  
20 letter?

21 A. No, my brother Lee's signature.

22 Q. This letter indicates that American  
23 International has given 90 days notice and is going  
24 to vacate the premises on August 1, 1981. Is that  
25 consistent with your recollection of when they

175

1 understanding of what you bought from Mr.  
2 Skjoldager?

3 A. I think.

4 Q. I know this goes back to 1972, a long  
5 time, but what was your understanding of the oil  
6 that was on the premises? What oil did Skjoldager  
7 own that you bought?

8 A. I don't know where he could have -- the  
9 only way I would see is possibly in a dispenser,  
10 but I don't see. Is there an oil dispenser?

11 Q. From your recollection, do you remember  
12 anything about oil being on the premises that  
13 Skjoldager sold?

14 A. No. If it is on here, I guess it is on  
15 here.

16 Q. Let's turn to page 2 which is Exhibit A  
17 to the bill of sale. If you will look at item  
18 number 9, it says one oil drainage barrel. Do you  
19 remember there being an oil drainage barrel on the  
20 property at some point?

21 A. Must have been.

22 Q. Don't assume.

23 A. I don't remember.

24 Q. Did you ever see any kind of barrels on  
25 the premises that were used for waste oil?



1 A. Yes.

2 Q. During what period of time did you see  
3 barrels of waste oil?

4 A. Apparently I saw a waste oil barrel.  
5 This is an oil drainage barrel, so it is not the  
6 same as dispensing. So he must have changed oil on  
7 the premises, I guess.

8 Q. Again, I want you to be sure that you are  
9 not making assumptions. I want to know what you  
10 have seen yourself.

11 A. I don't remember. I do remember a waste  
12 oil drum being on the premises.

13 Q. Where was it located physically on the  
14 premises?

15 A. Probably close to the wash rack.

16 Q. So this would be on the main floor?

17 A. Right.

18 Q. As you are driving in the garage, on the  
19 left-hand side?

20 A. It would be on the left-hand side, yes.

21 Q. What was your understanding of what was  
22 done with this, how this waste oil barrel was used?

23 A. My understanding?

24 Q. Yes.

25 A. If I saw an oil drainage barrel there

70

CROSBY, HEAFEY, ROACH & MAY **COPY**  
PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

700 SOUTH FLOWER STREET, SUITE 2200  
LOS ANGELES, CALIFORNIA 90017  
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333 BUSH STREET, SUITE 2580  
SAN FRANCISCO, CALIFORNIA 94104-2899  
(415) 543-8700  
FAX (415) 391-8269

February 10, 1993

VIA FACSIMILE WITH HARD COPY TO FOLLOW

Gilbert A. Jensen, Esq.  
Sr. Deputy District Attorney  
Consumer and Environmental  
Protection Division  
7677 Oakport Street  
Suite 400  
Oakland, CA 94621

**Re: Request To County Of Alameda To Name Douglas  
Motor Service And Its Partners As Responsible Parties  
As To 1428-1434 Harrison St. and 1435-1443 Alice  
St., Oakland, California**

Dear Mr. Jensen:

We represent Alvin H. Bacharach and Barbara Jean Borsuk, owners of the above property. We would like to meet with you and Mr. Paul Smith to briefly discuss Mr. Smith's February 5, 1993 Order on behalf of the Alameda County Health Care Services Agency. A copy of Mr. Smith's Order is enclosed.

In our letters of October 14, 1992 and January 29, 1993, we had requested that the County name Douglas Motor Service and its partners on the County's Orders for investigation and remediation of the property. Mr. Smith's February 5, 1993 Order names Douglas Motor Service and its partners, but only with regard to unauthorized releases from the gasoline tanks.

The Order does not address Douglas Motor Service's responsibility for two other areas of contamination in the garage. These areas are the hydraulic lift on the main floor and the underground piping and waste oil system in the basement. Douglas Motor Service operated a parking garage and gasoline station on the property from 1972 to 1988, and Douglas' subtenants performed auto repairs and used the hydraulic lift and waste oil system. Moreover, it is apparent that leakage from the hydraulic lift and waste oil system occurred throughout Douglas' 16-year tenancy, irrespective of Douglas' own use. Under the State Water Resources

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PROFESSIONAL CORPORATION

Gilbert A. Jensen, Esq.  
February 10, 1993  
Page 2

Control Board's decisions, Douglas' control over these facilities while leakage occurred is enough to make Douglas a responsible party.

In our letters of October 14, 1992 and January 29, 1993, we presented substantial evidence that Douglas Motor Service is a responsible party for these areas of the garage. Moreover, the hydraulic lift and basement oil system have been the subject of numerous letters from the County to the owners, directing them as to site investigation and health and safety precautions necessary in these areas. Mr. Smith's February 5, 1993 letter, however, makes no reference to these areas or to the owners' request that the County name Douglas as a responsible party regarding them.

Perhaps this omission can be explained by the fact that the September 24, 1990 Order referenced in Mr. Smith's February 5, 1993 letter referred only to the gasoline storage tanks and did not address other tanks and contamination on the property. It is clear from the course of dealings between the County and the owners for over two years, however, that the County expects all areas of the garage to be addressed.

It is therefore important that Douglas Motor Service and its partners be named as responsible parties regarding these other tanks and areas of contamination. The evidence and State Board decisions discussed in our previous letters demonstrate that Douglas is a responsible party with regard to all contamination in the garage. And, here as in many other sites, the high cost of investigation and cleanup make it imperative that all responsible parties be named in the Order.

We therefore request that the County amend its February 5, 1993 Order to name Douglas and its partners as responsible parties with regard to all tanks and contamination in the garage. This can easily be accomplished by deleting the word "gasoline" in the second line and in the next to last line of the "Order" in Mr. Smith's letter.

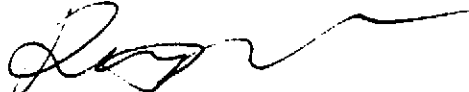
We would also like to meet with you and Mr. Smith to discuss this amendment. By meeting with you, we hope to avoid the need for another Petition to the State Board, which has already reviewed this site once. Since our 30 days to prepare a Petition is now running, we would like to meet with you and Mr. Smith next Wednesday, the 17th, if that date is available. I will call your office

CROSBY, HEAFEY, ROACH & MAY  
PROFESSIONAL CORPORATION

Gilbert A. Jensen, Esq.  
February 10, 1993  
Page 3

to arrange an appointment and appreciate your consideration of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Randall D. Morrison", with a long horizontal flourish extending to the right.

Randall D. Morrison

RDM:ma

Enclosure

cc w/Encl: William J. Trinkle, Esq.

DECLARATION OF WILLIAM A. THOMPSON, III

I, William A. Thompson, III, hereby declare:

1. I am the former owner of Thompson Associates, an automotive repair and service business at 1432 Harrison Street, Oakland, CA 94612 (Harrison Garage). I have personal knowledge of the facts stated herein, and if called as a witness, I could and would competently testify thereto.
2. On April 1, 1974, I entered into a sublease with Mr. Sanford Douglas, Partner, Douglas Motor Services for space at the Harrison Garage. The sublease was for a period of one year. Attached and incorporated by reference as Exhibit "A" is a true and correct copy of the sublease.
3. Thompson Associates offered to the public tune-up service specializing in fuel injection and general automotive repairs at the Harrison Garage. Attached and incorporated by reference as Exhibit "B" is a true and correct copy of my ad in the 1974 edition of the Pacific Bell Yellow Pages.
4. The hydraulic lift located in the premises was used in conjunction with the service and repair of customer cars. I serviced about five (5) cars per day (Monday through Friday) and the lift was in continual use.
5. To the best of my knowledge, the hydraulic lift was not serviced by Douglas Motor Services. However, I do recall an accumulation of presumably oil and water in the hydraulic lift pit.
6. In addition, I changed oil for my customers. I poured approximately 300 gallons of used oil down a fill pipe near the hydraulic lift during my tenancy. I was instructed to do so by someone from Douglas Motor Services. I do not know where the used oil went or how it was collected for disposal.
7. On or about March 31, 1975, I vacated the premises and discontinued business at the Harrison Garage.
8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of December 1992, at San Diego, California.



William A. Thompson, III  
13148 Trail Dust Avenue  
San Diego, CA 92129  
(619) 484-8264

**CROSBY, HEAFEY, ROACH & MAY**

PROFESSIONAL CORPORATION

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(415) 543-8700

FAX (415) 391-8269

March 4, 1993

HAND DELIVERY

Mr. Paul M. Smith  
Hazardous Materials Specialist  
Alameda County Health Care  
Services Agency  
Hazardous Materials Program  
Department of Environmental Health  
80 Swan Way, Room 200  
Oakland, CA 94621

Re: 1428-1434 Harrison Street and  
1435-1443 Alice Street, Oakland, CA:  
Appeal of County Decision to State Water  
Resources Control Board

Dear Mr. Smith:

This letter serves as formal notice that, pending further discussions with you and Mr. Gil Jensen, the owners of the subject property, in order to preserve all rights of review with the State Water Resources Control Board, have decided to file an appeal of the County of Alameda's ("County") decision not to name Douglas Motor Service and its partners as responsible parties with respect to the hydraulic lift and tank and the underground piping and waste oil system in the Harrison Street garage.

Enclosed is a list of persons who have an interest in the subject matter of the Petition. Pursuant to 23 C.C.R. § 2050(a)(8), Petitioners request that the County provide them with a list, with a copy to the State Board, of any additional persons known by the County to have an interest in the subject matter of the Petition.

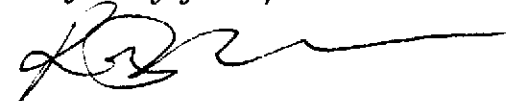
CROSBY, HEAFEY, ROACH & MAY  
PROFESSIONAL CORPORATION

Mr. Paul M. Smith.  
March 4, 1993  
Page 2

Petitioners also hereby request the County to prepare the County's record of its decision in this action pursuant to 23 C.C.R. § 2050(a)(10).

Thank you for your cooperation.

Very truly yours,



Randall D. Morrison

RDM/mzc

cc: Gilbert A. Jensen, Esq.

Mr. Leland Douglas  
Douglas Parking Services  
1721 Webster Street  
Oakland, CA 94612

Mr. Ron Douglas  
Douglas Parking Service  
1721 Webster Street  
Oakland, CA 94612

Mr. Paul M. Smith  
Hazardous Materials Specialist  
Alameda County Health Care  
Services Agency  
Hazardous Materials Program  
Department of Environmental Health  
80 Swan Way, Room 200  
Oakland, CA 94621

Gilbert A. Jensen, Esq.  
Sr. Deputy District Attorney  
Consumer and Environmental Protection Div.  
7677 Oakport Street, Suite 400  
Oakland, CA 94621



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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

ALVIN H. BACHARACH and )  
BARBARA JEAN BORSUK, )  
 )  
Plaintiffs, )  
vs. )  
STEVEN DAVIS, LEONARD DAVIS, )  
ROBERT L. DAVIS, and )  
DOES 1 to 25, inclusive, )  
 )  
Defendants. )  
----- )  
AND RELATED ACTIONS. )  
----- )

**COPY**

Consolidated  
Case No. 670066-3  
and No. 666290-3

Pages 275 - 498

DEPOSITION OF RONALD DOUGLAS  
Volume II  
Thursday, July 2, 1992

Reported by:  
Peggy Tsujimoto  
CSR No. 5229

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I N D E X

Deposition of RONALD DOUGLAS  
Volume II  
Thursday, July 2, 1992

Examination by	Page
Mr. Morrison	281
Mr. Drummond	448
Mr. Handel	485

AFTERNOON SESSION 387

Questions advised or instructed not to answer:  
None

Portions of transcript marked at request of  
counsel:  
None

E X H I B I T S

Deposition of RONALD DOUGLAS

Volume II

Thursday, July 2, 1992

Plaintiffs'

Number

Page

75	One-page letter dated January 10, 1983, to Alvin Bacharach from Ronald S. Douglas	298
76	One-page letter dated January 27, 1986, to Ron Douglas from Toby Sherwood	325
77	One-page letter dated March 7, 1986, to Ron Douglas from Toby Sherwood	328
78	One-page handwritten letter dated October 29, 1985, to Toby Sherwood from Ronald S. Douglas and one-page handwritten document	329
79	One-page letter dated March 10, 1986, to Toby Sherwood from Ronald S. Douglas	340
80	Four-page document	364
81	Five-page document	369

277

1	82	Two-page document	380
2	83	14-page document	390
3	84	One-page handwritten document	402
4	85	Two-page document entitled	404
5		"Application For Permit To Operate	
6		Underground Storage Tank"	
7	86	One-page Permit dated Jan. 1, 1988	413
8	87	One-page Permit dated Jan. 1	414
9	88	Eight-page document entitled	417
10		"Title 26 State Water Resources Board"	
11	89	Three-page document entitled	424
12		"Inventory Reconciliation Sheet"	
13	90	28-page document with first page	426
14		being dated May 23, 1973	
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1 BE IT REMEMBERED that, pursuant to Adjournment  
2 of July 1, 1992, and on Thursday, July 2, 1992,  
3 commencing at the hour of 9:45 a.m. thereof, at the  
4 offices of LUKENS AND DRUMMOND, One Maritime Plaza,  
5 Suite 1600, San Francisco, California, before me,  
6 PEGGY TSUJIMOTO, a Certified Shorthand Reporter and  
7 Notary Public in and for the State of California,  
8 personally appeared

9 RONALD DOUGLAS,

10 called as a witness by Plaintiffs, who, having been  
11 by me previously duly sworn, was thereupon examined  
12 and testified as hereinafter set forth.

13  
14 APPEARANCES:

15 CROSBY, HEAFEY, ROACH & MAY, 1999 Harrison  
16 Street, Oakland, California 94612, represented by  
17 RANDALL D. MORRISON, Attorney at Law, appeared as  
18 counsel on behalf of Plaintiffs and  
19 Cross-Defendants Alvin H. Bacharach and Barbara  
20 Jean Borsuk; and

21 MARK BORSUK, Attorney at Law, 1626 Vallejo  
22 Street, San Francisco, California 94123-5116,  
23 appeared as counsel on behalf of Plaintiffs and  
24 Cross-Defendants Alvin H. Bacharach and Barbara  
25 Jean Borsuk; and

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LUKENS AND DRUMMOND, One Maritime Plaza, Suite  
1600, San Francisco, California 94111, represented  
by DONALD F. DRUMMOND, Attorney at Law, appeared as  
counsel on behalf of Defendants and  
Cross-Complainants Steven Davis, Leonard Davis,  
Robert L. Davis; and

ENGLAND & BELOTE, 425 California Street, Suite  
1100, San Francisco, California 94104, represented  
by RICHARD T. HANDEL, Attorney at Law, appeared as  
counsel on behalf of Cross-Defendants Grubb &  
Ellis; and

RANDICK & O'DEA, 1800 Harrison Street, Suite  
1771, Oakland, California 94612, represented by  
WILLIAM J. TRINKLE, Attorney at Law, appeared as  
counsel on behalf of Cross-Defendants Douglas Motor  
Services, Leland Douglas, David Flett; and

Also present: Barbara Borsuk and Steven  
Davis.

1           A.    Yes.

2           Q.    With regard to the cars that you said  
3 were stored in the basement, can you describe  
4 whether or not they were stored in one particular  
5 area of the basement or whether they were  
6 distributed?

7           A.    Distributed.

8           Q.    Throughout?

9           A.    Throughout.

10          Q.    No particular spot?

11          A.    No.

12          Q.    Did oil and grease leak out of the cars  
13 that were in long-term storage?

14          A.    Yes.

15          Q.    Does that mean that there were puddles of  
16 oil and grease on the floor of the basement?

17          A.    There was until we cleaned it up.

18          Q.    Did these puddles of oil and grease that  
19 I have referred to ever extend far enough that they  
20 covered more than one entire parking space?

21          A.    Yes.

22          Q.    How broad at its maximum? How much of  
23 this surface area down here was covered with oil or  
24 grease during the time you were there?

25          A.    It could run as much as a quarter,

1 third.

2 Q. Was there any particular area that

3 accumulated more oil and grease that you noticed?

4 A. No, it didn't. It was equal.

5 Q. When accumulations of oil and grease took

6 place like this -- you said until we cleaned it up?

7 A. Right.

8 Q. What did you do to clean it up?

9 A. We used cleaning solvent and sawdust or

10 dry -- it is called rice, whatever it is.

11 Q. Rice hulls?

12 A. Something like that. I don't know.

13 Q. When you were at the garage, Ron, how

14 often was this cleanup procedure employed?

15 A. Once a week.

16 Q. What did you do with the cars? You

17 couldn't move the cars, could you?

18 A. We don't have to move the cars. You go

19 under the car.

20 Q. How did you do that? Physically, I know

21 you didn't crawl under a car.

22 A. No, I didn't crawl under the cars.

23 Q. What did you do?

24 A. I didn't do it. With a mop and just mop

25 it under the car with a mop and that is it.



1 Q. Who did this work?  
2 A. One of the employees.  
3 Q. Can you tell us who it was during the  
4 time you were there?  
5 A. Whoever was there. We would bring them  
6 from another location, if necessary.  
7 Q. Did Debbie do any of this cleanup work?  
8 A. No.  
9 Q. You didn't?  
10 A. I would if necessary. I would do it,  
11 sure. It doesn't matter to me.  
12 Q. Before Oscar was discharged, did he do  
13 any of this cleanup work?  
14 A. Yes.  
15 Q. Can you think of any other individuals  
16 whom you know did this kind of work at Harrison  
17 Street?  
18 A. You asked me yesterday about the  
19 employees that we had down there and I do not  
20 personally remember any other employees down  
21 there. I told you if we saw the payroll records, I  
22 could tell you. I don't know who else was down  
23 there besides -- it was only really one-and-a-half,  
24 maybe two person operation.  
25 So when you say employees, it was sort of

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1 part-time, you know, intermingled. There was no --  
2 it was a full-time employee, but there were only  
3 two persons.

4 Q. Let's talk more about your procedure for  
5 the cleanup. You said you used mops. Did you use  
6 mops and brooms or just physically use mops? Is  
7 that the device you used to clean it up? I am not  
8 joking.

9 A. I know you are not joking. You want to  
10 know how to clean up oil, how we did it? We poured  
11 down a little solvent, wash it with the long  
12 brush. You put some rice or whatever, sawdust or  
13 the rice, something. You used the word.

14 Q. Hulls?

15 A. Yes. You put that on, dries it up. You  
16 sweep it up, put it in a box and use it again until  
17 it got dirty. When it got to the point where it  
18 wouldn't absorb anymore, you throw it away.

19 Q. Where did you throw it away?

20 A. Wait now. We would put it in the garbage  
21 can and then that would be hauled off by the  
22 Oakland Scavenger.

23 Q. This was done approximately once a week?

24 A. Once or maybe three times a month. Just  
25 depends. It depends on how much oil was down

1 there. Whenever it got slippery, you would want  
2 to. For your own safety, you would want to do it.  
3 Mr. Bacharach would walk down there. I would have  
4 to hold his hand so he wouldn't slip.

5 Q. Where was this solvent stored?

6 A. It wasn't stored any place.

7 Q. Where did you get it? You bought it,  
8 right?

9 A. No. I got it from a dispenser at Douglas  
10 Motor Service. It wasn't stored on the premises.

11 Q. How often would somebody go over to  
12 Webster Street and get some of this solvent?

13 A. Just bring in a gallon container and  
14 bring it over.

15 Q. Did it have a brand name, do you know?

16 A. Cleaning solvent. I guess Chevron  
17 supplied it to us. I think they pumped it in a 55  
18 gallon drum for us so we would use it for years and  
19 years. It was good for a long time.

20 Q. Do you still have those drums over at  
21 Webster Street?

22 A. I don't know if we still have them. I  
23 doubt it, but I am talking about those dispensing  
24 drums, the old fashioned one. You pull down the  
25 lever and the oil would come out or whatever was in

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1           there.

2           Q.    Tell us, if you can, a little bit more  
3           about the drums. Did they have a label on them  
4           that said contains X?

5           A.    Yes, they had labels on them because  
6           obviously you don't want to pull out the wrong  
7           stuff or the wrong material.

8           Q.    Do you remember the chemical name or the  
9           description that was on the label?

10          A.    Cleaning solvent.

11          Q.    Did it have a number like Z-50?

12          A.    No. It says cleaning solvent, period.

13          Q.    Did it have the Chevron logo on it?

14          A.    No, I don't think it had the Chevron logo  
15          on there. I don't believe so. You will have to --  
16          I apologize. I am not making fun of you or  
17          anything, but it is sort of to me.

18          Q.    It is part of the job.

19          A.    It is sort of ridiculous. As you say,  
20          you have got a job to do. I am not laughing at  
21          you.

22          MR. TRINKLE: We have been going for an hour.

23          MR. MORRISON: We are just about done. Give  
24          me a second to look this over and we might be  
25          done.

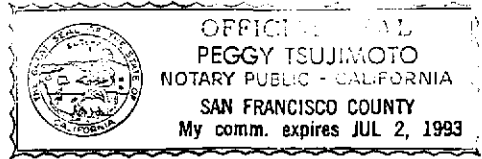
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STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO ) ss.

I hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, PEGGY TSUJIMOTO, a Certified Shorthand Reporter, and a disinterested person, and was thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand and affixed my seal of office this 11th day of July, 1992.



*Peggy Tsujimoto*  
-----  
PEGGY TSUJIMOTO, NOTARY

1 PROOF OF SERVICE BY MAIL

(1013, 2015.5 C.C.P.)

2  
3 I am a citizen of the United States and a resident of  
4 Alameda County. I am over the age of eighteen years and not a  
5 party to the within action; my business address is 1999 Harrison  
6 Street, Oakland, California 94612. On March 8, 1993, I served  
7 the within Petition for Review of Failure to Act by the County of  
8 Alameda Health Care Services Agency re: Corrective Action Order  
9 for Harrison Street Garage, 1432 Harrison Street, Oakland,  
10 California 94612 and Request to Hold Petition in Abeyance  
11 in said action by placing a true copy thereof enclosed in a  
12 sealed envelope with postage thereon fully prepaid, in the United  
13 States mail at Oakland, Alameda County, California, addressed as  
14 follows:


15 Messrs. Ron and Leland Douglas  
16 c/o Mr. William J. Trinkle, Esq.  
17 Randick & O'Dea  
18 1800 Harrison Street, Suite 2350  
19 Oakland, CA 94612

20 Mr. Paul M. Smith  
21 Hazardous Materials Specialist  
22 Alameda County Health Care  
23 Services Agency  
24 Hazardous Materials Program  
25 Department of Environmental Health  
26 80 Swan Way, Room 200  
Oakland, CA 94621

Gilbert A. Jensen, Esq.  
Sr. Deputy District Attorney  
Consumer and Environmental Protection Div.  
7677 Oakport Street, Suite 400  
Oakland, CA 94621

1 Regional Water Quality Control Board  
2 San Francisco Bay Area Region  
3 2101 Webster St., Suite 500  
4 Oakland, CA 94612

4 I declare under penalty of perjury that the above is true  
5 and correct. Executed on March 8, 1993, at Oakland, California.

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7 \_\_\_\_\_

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