



KAMUR INDUSTRIES INC.

2351 Shoreline Dr. Alameda, CA 94501

FACSIMILE COVER SHEET

From: MURRAY STEVENS

To: SULET SHIH

Fax Number: 569-4757

Date: 2 June 1993

Number of pages in transmission is 7 including this cover sheet

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MESSAGE: THE ATTACHED MONITORING WELL EASEMENT
AGREEMENT WAS FAXED TODAY TO RAY FRIEDMAN'S
ATTORNEY PER HIS INSTRUCTIONS.
WE ARE AWAITING A REPLY

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REPLY TO FAX NUMBER (510) 523-3172

MONITORING WELL EASEMENT AGREEMENT

This **MONITORING WELL EASEMENT AGREEMENT** (the "Agreement") is made as of June __, 1998 by and between **ALBANY BOWL PROPERTIES**, a California limited partnership, ("Grantor") and **KAMUR INDUSTRIES, INC.**, a California corporation ("Grantee").

RECITALS

A. Grantor is the owner of several adjacent parcels of real property commonly known as 410 to 540 San Pablo Avenue in Albany, California (the "Property").

B. Grantee currently leases and operates a car wash facility on that certain real property commonly known as 400 San Pablo Avenue in Albany, California (the "Car Wash Property"). Until 1990, Grantee also operated a retail gasoline facility at the Car Wash Property.

C. The Alameda County Health Care Services Agency ("County") and the San Francisco Regional Water Quality Control Board ("Regional Board") directed Grantee to undertake certain investigative and remedial measures at the Car Wash Property ("Remedial Work") as a result of a discharge of gasoline from Grantee's facility. Shortly thereafter, Grantor caused to be installed two groundwater monitoring wells on the Property, designated as "MW-2" and "MW-3" as depicted on the attached Exhibit A. Grantor and Grantee have been monitoring these two groundwater wells at their individual expense.

D. Grantor now intends to abandon and close MW-2 in accordance with applicable laws.

E. In order to comply with the requirements of the Regional Board and/or the County, Grantee is required to continue monitoring MW-3 until the Regional Board and/or the County agree that they may be abandoned and closed.

F. Grantee wishes to obtain the right to continue to monitor MW-3 as required by the Regional Board, and Grantor wishes to convey to Grantee the right to continue to monitor MW-3, in accordance with this Assignment.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and other consideration, the sufficiency and receipt of which is hereby acknowledged by the parties, Grantor and Grantee agree as follows:

1. **EASEMENT IN GROSS**

1.1 **Grant.** Grantor hereby grants to Grantee the following irrevocable easements in gross (collectively the "Easements") burdening the Property which Easements shall be subject to the terms and conditions of this Agreement:

(a) Until it is closed pursuant to the provisions of Section 3 hereof, a non-exclusive easement in gross to extract water from MW-3 for the purpose of testing or remediating groundwater and other hydrogeologic conditions and performing such other tests and investigations as may be required by the Regional Board or other governmental authorities.

(b) A nonexclusive easement in gross to enter on the Property to close and abandon MW-3 after approval is obtained from the Regional Board. Once such approval is obtained, Grantee shall close and abandon MW-3 in accordance with with the provisions of applicable laws.

(c) A nonexclusive in gross ingress, egress and access easement over such portion of the Property as may be reasonably required to exercise the Easement rights granted pursuant to Sections 1(a) and (b), above. For purposes of this Agreement, reference to "MW-3" shall include that certain monitoring well as depicted on the attached Exhibit A, and any other replacement or relocated groundwater well.

1.2 **Benefitted Parties.** The Easements shall be in gross, personal to Grantee and Grantee's successors and assigns, and shall not be appurtenant to any land. The Easements may be exercised by Grantee and Grantee's successors and assigns and their respective agents, contractors, employees, guests, invitees and licensees.

1.3 **Repairs, Maintenance and Compliance with Laws.** Grantee shall promptly repair any damage to the Property caused by the exercise of the Easements. In addition Grantee shall exercise its rights under the Easements in compliance with all applicable governmental laws, rules and regulations.

1.4 **Time of Exercise.** Grantee shall give Grantor at least five (5) hours' prior oral or written notice of Grantee's intent to enter the property for the purpose of exercising Grantee's Easement rights. Except for exigent circumstances, Grantee shall endeavor to enter the Property only during customary business hours.

1.5 **Term.** The rights granted to Grantee under this Easement Agreement shall remain in full force and effect until the Regional Board and all other governmental agencies having jurisdiction over Grantee unconditionally release Grantee from any and all obligations to maintain groundwater monitoring wells on the Property. Upon the termination of this Agreement pursuant to this Section 1.5, the parties shall execute such documents as may be deemed necessary by Grantor or Grantee to extinguish the rights and obligations of the parties heretofore.

1.6 **Inspections At Grantee's Cost.** The costs associated with any and all activities, inspections, and tests conducted by Grantee under this Agreement shall be borne completely by

Grantee and the parties agree that Grantor shall have no obligation to pay for or reimburse Grantee for any such tests or inspections or the preparation of any related reports.

1.7 Soil Or Groundwater Samples. Grantee, at its sole cost and expense, shall promptly and properly and in compliance with all applicable governmental regulations remove and dispose of all soil, groundwater and other samples taken from the Property pursuant to this Agreement. Grantee shall be solely responsible for and bear all fees, charges, impositions, and other costs and expenses (specifically including, without limitation, costs of defense, settlement and attorneys' fees) relating to the removal and disposal of any sample.

2. RELOCATION OF FACILITIES

2.1 Grantee's Right to Relocate. Grantee shall have the right to relocate MW-3 if required by the Regional Board, subject to consent of Grantor which consent shall not be withheld unreasonably. Any such relocation pursuant to this Section 2.1 may be to any location on the Property required by the Regional Board; provided, however, that Grantee shall use its reasonable efforts to restrict such relocation to avoid unreasonable interference with Grantor's use and enjoyment of the Property. Any costs associated with relocation under this Section 2.1 shall be paid by Grantee, unless Grantor requests alternate locations that will cause Grantee to incur materially increased construction, operation or maintenance costs, in which case Grantor shall pay such additional costs.

2.2 Grantor's Right to Relocate. Grantor shall be entitled to have MW-3 relocated at other locations within the Property in order to permit Grantor to develop the Property, subject to the consent of the Regional Board, the County and/or any other governmental agency having jurisdiction over the Property and MW-3, and subject further to Grantee's consent, which shall not be withheld unreasonably. Any relocation of MW-3 shall not in any way impede Grantee's ability to perform its obligations pursuant to any order, directive or request from the Regional Board, the County or any other governmental agency with jurisdiction over the Property. All costs incurred in relocating MW-3 pursuant to this Section 2.2 shall be paid fully by Grantee, except that Grantor shall be responsible for all costs related to abandoning and closing MW-3.

3. ABANDONMENT OF GROUNDWATER WELL

3.1 Removal of Facilities. Within ninety (90) days after the completion of the groundwater monitoring or remediation required by the Regional Board or required by other governmental agencies, Grantee shall properly cause MW-3 to be abandoned and removed in accordance with applicable laws.

3.2 Payment or Landscaping of Easement Area. Immediately following the abandonment and removal of MW-3, Grantee shall, as approved by Grantor, pave that portion of the Property where it was located, in conformance to the adjacent area.

3.3 Costs Paid by Grantee. Except as provided in Section 2.2, all costs associated with the activities described in this Section 3 shall be paid fully by Grantee.

4. **GRANTOR'S OBLIGATIONS**

4.1 **Interference With Easement Rights.** Grantor shall not engage in any act which would be inconsistent or interfere with Grantee's exercise of the Easements. Subject to the provisions of Section 2, Grantor shall not: (i) block access to MW-3, or (ii) construct improvements over such facilities, or drill or excavate at any locations which might endanger MW-3.

4.2 **Damage To Monitoring Well.** Grantor shall promptly, upon receipt of notice of same, repair (or pay the cost of repair for) all damage to MW-3 caused by Grantor, its tenants, agents, or invitees or other users of the Property other than Grantee or Grantee's agents, contractors, employees, guests, licensees and invitees.

5. **MISCELLANEOUS**

5.1 **Protection of Property Against Lien Claims.** Grantee shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanic's materialmen's, contractor's, or subcontractor's or other lien arising from the exercise of the Easement. In the event any such lien, claim, or demand is recorded against the Property, Grantee shall discharge such lien, claim or demand prior to the commencement of any foreclosure action with respect to such lien, either by paying such lien, claim or demand or by furnishing a bond as specified in California Civil Code Section 3143 or any successor statute thereto.

5.2 **Grantor's Right to Discharge Liens.** If Grantee does not discharge any such lien, claim or demand as specified in Paragraph 5.1, Grantor shall have the right, but not the duty, to post such bond or to pay or otherwise discharge, stay or prevent the enforcement or execution of any such lien. Upon demand Grantee shall reimburse Grantor for all sums paid by Grantor pursuant to this Paragraph 5.2, together with all Grantor's reasonable attorneys' fees and costs related to such matter.

5.3 **Notices.** Any written notice or communication to any party required or permitted under this Easement Agreement shall be deemed to have been duly delivered on the date of receipt and may be delivered by personal delivery, by overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and addressed to the addressee at the address stated opposite its name below.

If to Grantor: Albany Bowl Properties
540 San Pablo Avenue
Albany, CA 94706
Attn: Ken Friedman

If to Grantee: Kamur Industries, Inc.
2351 Shoreline Drive
Alameda, CA 94501
Attn: Murray Stevens

The addresses set out above may be changed from time to time by written notice in compliance with this section.

5.4 Attorneys' Fees.

(a) Payment to Prevailing Party. In any dispute between the parties, whether or not resulting in litigation or any appeal therefrom, the prevailing party shall be entitled to recover from the other party all reasonable costs, fees and expenses, including, without limitation, reasonable attorneys' fees. "Prevailing parties" shall include without limitation (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party which receives performance from the other party of an alleged breached covenant or a desired remedy where such Performance is substantially equal to the relief sought in an action; or (c) the party determined to be the prevailing party by a court of law or by arbitration.

(b) Scope of Fees. Attorneys' fees under this Section 5.4 shall include attorneys' fees on any appeal, in any bankruptcy or similar or related proceeding in federal or state courts, and in any proceeding (including, without limitation, any arbitration). A party entitled to attorneys' fees under this Section 5.4 shall be entitled to all other reasonable costs and expenses incurred in connection with such action or proceeding.

(c) Recovery of Judgment. A party entitled to attorneys' fees under this Section 5.4 shall also be entitled to recover all costs, fees and expenses incurred in the collection or recovery of any judgment or settlement related thereto. The provisions of this Section 5.4 shall survive and not be merged with any judgment and is separate and severable from the remainder of this Agreement.

5.5 Interpretation of Agreement. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of California. The captions and headings in this Agreement are for convenience of reference only and shall not be used to define, limit or construe the meaning hereof. All exhibits attached to this Agreement are hereby incorporated herein by this reference.

5.6 Successors. Each and all of the terms, agreements and conditions of this Agreement shall burden and run with the Property and shall be binding on and shall inure to the benefit of the successors and assigns of the respective parties. Grantor expressly agrees to inform any successors in interest of Grantor of the existence of this Agreement and the rights and obligations of the parties hereunder.

5.7 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties shall negotiate in good faith to establish appropriate wording to replace the wording determined to be invalid, void or unenforceable.

5.8 Entire Agreement. This instrument contains the entire agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any amendments or modifications concerning this instrument shall be of no force or effect unless specified in a subsequent writing modification signed by the party to be charged.

IN WITNESS WHEREOF, this Agreement has been executed by each of the parties as of the date set forth above.

GRANTOR:

ALBANY BOWL PROPERTIES,
a California limited partnership

By _____
Its General Partner

GRANTEE:

KAMUR INDUSTRIES, INC.,
a California corporation

By _____
Murray Stevens,
President