

JONATHAN S. LEO
CYNTHIA L. KOEHLER
HELLER, EHRMAN, WHITE & MCAULIFFE
333 Bush Street
San Francisco, CA 94104-2878
(415) 772-6000

2/5/91

Attorneys for Petitioners
ALVIN BACHARACH and BARBARA BORSUK

BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

Petition for Review of Failure to Act)
by the County of Alameda Health Care)
Services Agency re: Corrective Action) No.
Order for Harrison Street Garage, 1432)
Harrison Street, Oakland, California)
94612)
_____)

DECLARATION OF ALVIN BACHARACH

I, ALVIN BACHARACH, hereby declare:

1. I am a petitioner in the above-referenced matter and a co-owner of the Harrison Street Garage in Oakland. I have personal knowledge of the facts herein alleged.

2. I purchased the Harrison Street Garage located at 1432 Harrison Street in Oakland, California in 1945 with my sister, Barbara Jean Borsuk. At the time of the acquisition, the property included a parking garage, dispensing area, and auto repair facility. The garage consists of two connected buildings. The parking garage, with a street address of 1439 Alice Street, is a 60,000 square foot multi-level building, and the 1432 Harrison

Street facility is a 9,000 square foot structure with a mezzanine. Until March, 1988, gasoline had always been sold on the property incidental to the parking business.

3. We purchased the garage as investment property and have leased it continuously since 1945 as rental property. At no time have we ever owned or operated the parking garage, repair shop or gasoline sales businesses on this property.

4. On August 21, 1972 Douglas Motor Services ("Douglas") purchased the garage business at Harrison Street from Carl Don Skjoldager who had leased the property in 1971. A new lease was executed between Douglas and ourselves at this time. The lease ran from August 1972 through August 1974.

5. Several months prior to the termination of the first lease, we entered into a second lease with Douglas extending from April 1, 1974 through March 31, 1981. The third and final lease was executed in January 1981 and ran from April 1, 1981 through March 31, 1988. See Petition Exh. 3.

6. Under the terms of the various leases (the "Leases"), it was Douglas' responsibility, and not our own, to maintain and operate the underground storage tanks ("USTs") on the property in a safe manner and in compliance with all applicable statutes and regulations. See Leases, Paragraph 3, Petition Exh. 3. Moreover, each of the Leases included a hold harmless agreement wherein Douglas as the tenant expressly agreed

to accept liability for all problems associated with his use of the property, including leakage. See Leases, Paragraph 9, Petition Exh. 3.

7. It was my clear understanding when Douglas replaced the existing 550 gallon tanks on the property, that Douglas owned the new 1000 gallon tanks which he installed. The first tank was removed and replaced in August 1975. Douglas neither informed me of his intent to remove the existing 550-gallon tank and purchase or install a new tank, nor did Douglas make any effort to obtain my consent in this regard. After this first new tank was installed, Douglas requested that I contribute toward the installation and purchase cost. Since the current lease clearly established that revenues from gasoline sales were not to be included toward the rent, 1974-1981 Lease, ¶28, Petition Exh. 3B, I felt that the installation of a new tank was therefore wholly Douglas' responsibility and declined to contribute. See Petition Exh. 7.

8. When Douglas installed the second 1000 gallon tank in 1982, I agreed to pay 21.5% of the cost essentially as a goodwill gesture. It remained my position that I was not responsible for and did not own this tank since it was Douglas' decision to purchase and install it for the purpose of promoting his business. Nevertheless, rents had recently increased and it seemed appropriate to make this type of gesture in order to maintain a good landlord/tenant relationship which then existed between Douglas and myself. At no time did Douglas in any way

suggest that it believed that this contribution indicated that I was the "owner" of the tank. I believed at all times that it was Douglas who owned the new tank.

9. At no time during Douglas' tenancy did we, as landlords, have access to, or control over, the maintenance or operation of the underground tanks (or any of their equipment).

10. We had no knowledge whatsoever that there was any problem with the underground storage tanks until February 10, 1983. At that time I received a letter from Douglas containing a bid from the Robert J. Miller Company ("Miller"). A true and correct copy of the February 1983 letter and its enclosures is attached hereto. In April 1982, Miller had apparently examined the tanks and discovered a leakage problem. See Declaration of Mark Borsuk. It is my understanding that although Douglas knew in April 1982 of this problem, it took no action until November 1982. At that time, Douglas engaged Vernon Bernard to remove the second 550 gallon tank and install a new 1000 gallon tank.

11. Given the provisions of the leases regarding compliance with all applicable laws and statutes I assumed that Douglas was taking or would take all necessary and appropriate remedial action. I believed, based on the Miller October 4, 1982 bid, that "all permits and inspections as per the City and Bay Area Air Quality Control District (sic) specifications" had been secured. See Attachment. Even though Douglas ultimately selected

a different contractor to do the job, I assumed the work would be performed according to the same standards set forth in the bid which Douglas forwarded to me.

12. I am informed and believe thereon that in September 1986, Lee Douglas, the President of Douglas, informed my nephew, Mark Borsuk, that the underground tanks on the property were registered and were in compliance with all applicable reporting requirements.

13. The parties agreed not to renew the lease when it terminated on March 31, 1988. I had received a rental offer from another party, and Douglas chose not to exercise its right of first refusal to extend the lease term by matching the offer.

14. At the termination of its lease, Douglas did not empty the remaining product from USTs on the property, or remove them from the property. Nor did Douglas close the UST systems as required by statute.

15. On April 1, 1988 we entered into a new lease with Steven Davis which was intended to extend from April 1, 1988 through March 31, 2003. Pursuant to this lease, the new tenant agreed not to sell gasoline or engage in auto repair. The new tenant wished to use the premises solely as a parking garage.

16. Once we received the July 31, 1990 Notice of Violation from the County regarding the site contamination, we took immediate steps to comply with the County's requests. We engaged SCS Engineers to conduct a geophysical investigation of the site and submitted a tank closure plan to the County on August 28, 1990.

We have since that time been in constant contact with the County regarding appropriate and necessary site characterization and corrective actions.

17. While we do not have any firm estimate of the total cost of conducting the corrective action at the Harrison Street Garage required by the County, preliminary investigations indicate that it will be quite substantial. At the January 14, 1991 meeting with the County, see Petition Exh. 2, the Deputy District Attorney suggested that the cost could be as high as \$1.3 million or more. My sister and I indicated quite clearly at that time that we would be unable to pay such costs and, indeed, would be forced into bankruptcy if we had to comply with the Order by ourselves. The County representatives did not respond to our concerns in this regard.

18. I believe, based upon remarks he made about my commercial experience during the January 14, 1991 meeting with him, that Mark Thomson, the Deputy District Attorney, seems to believe that I personally have some sophistication in the area of underground storage tank removal and corrective actions. This is not the case. I am self-employed and have been a licensed real estate broker since 1947. I am engaged in leasing of commercial property, the purchase and sale of income properties and the development of apartment buildings and retail stores. I had virtually no personal experience whatsoever with underground storage tanks on any of the properties with which I am or have been involved until the County issued the Violation Notice regarding the

Harrison Street Garage last year. The only exceptions to this statement involve (1) a car wash in Modesto in which the tenants both installed and removed the USTs; and (2) property which contained a UST monitoring system at the time of purchase. In both cases I had no involvement with the UST issues on these properties.

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

Executed this 5 day of February 1991, at San Francisco, California.

Alvin Bacharach
ALVIN BACHARACH

SITE PLANNING
ECONOMIC FEASIBILITY STUDIES
FUNCTIONAL DESIGN PLANNING
OPERATIONAL SERVICES
COIN-TROL PARKING

Douglas Parking Company

PARKING CONSULTANTS & MANAGEMENT

Main Office

1721 WEBSTER STREET
OAKLAND, CALIFORNIA 94612

TELEPHONE 444-7352

January 10, 1933

← Feb 19 →



#255,000

Alvin Bacharach
11 Embarcadero West
Oakland, California 94607

Dear Al:

As per our conversation regarding the installation of a gas tank at 1432 Harrison Street; we had an original estimate from Robert Miller (enclosed) for \$6,979.00. As per usual, we try to save money wherever possible. As you can see by the enclosed bills we did save \$1,671.66.

\$6,979.00
\$5,307.34
\$1,671.66

\$1,500 represents 21.5% of \$6,979.00. If we multiply 21.5% of \$5,307 it comes out to \$1,141.00. Please send us a check for this amount.

Thank you for your courtesy in this matter.

Very truly yours,

HARRISON STREET GARAGE

Ronald S. Douglas
Ronald S. Douglas

562
3680

ROBERT J. MILLER CO.

Contractor's License No. 118850

Service Station and Industrial Equipment

3261 GROVE STREET
OAKLAND, CALIFORNIA 94609

853 - 5469 233-9000

October 4, 1982

Douglas Motor Service
1721 Webster Street
Oakland, CA 94612

Re: 1432 Harrison Street
Oakland, CA

Attention: Ron or Lee Douglas

Dear Sir:

We are pleased to submit the following quotation as requested by you.

To furnish and install as follows:

- 1 - One (1) 1,000 gallon U.L. approved tank (double asphalt wrapped).
- 2 - Excavate the tank hole, remove old 550 gallon tank, install new 1,000 gallon tank, and back fill with sand.
- 3 - Furnish and install the tank fittings, vent, fill and suction lines. All new suction line to pump and vent. Wrap all lines.
- 4 - Replace the cement removed by us, approximately 8'x15'x6" with wire reinforcing.
- 5 - Secure all permits and inspections as per the City and the Bay Area Air Quality Control District specifications.

TOTAL BID.....\$ 6,979.00

Very truly yours,

ROBERT J. MILLER COMPANY


Philip W. Musser

Accepted

Date

Please Note: The above quote is good for 30 days.

ROBERT J. MILLER CO.

Service Station and Industrial Equipment

04776

CONTRACTORS LICENSE NO. 118850
3261 GROVE STREET OAKLAND, CALIFORNIA 94609
(415) 653-5469

DATE 10/19/32	YOUR ORDER NO. Ron Douglas	OUR ORDER NO. 15931	VIA	TERMS NET 30 DAYS
------------------	-------------------------------	------------------------	-----	----------------------

SOLD TO Douglas Motor Service
1721 Webster Street
Oakland, CA 94612

SHIPPED TO 1432 Harrison Street
Oakland, CA

PART NO.	DESCRIPTION	UNIT	AMOUNT
	Dug up sidewalk - found many leaks in tank and product line. (Note: Barricades are still at job site - to be billed upon removal)		\$ 332 50
	Rental for compressor, jack hammer, asphalt blade and air hose.		150 00
	TOTAL.....		\$ 482 50
	Any invoice not paid within 30 days from date of invoice will be subject to finance charge of 1 1/2% per month or unpaid balance (18%) annually.		
PLEASE PAY WITH CHECKS		It is understood that the title of goods received shall remain in the name of Robert J. Miller Company until the full amount of this bill is paid.	
NO STATEMENT WILL BE SENT UNLESS REQUESTED			

Maximum FINANCE CHARGE, if period to the Previo

any, is determined by applying a Periodic Rate of 1 1/2% service
charge corresponding to an ANNUAL PERCENTAGE RATE of 18%

W. VERNON BERNARD . . . BUILDER

~~176 LEGENBERGER ROAD~~ • OAKLAND, CALIFORNIA ~~94621~~ • TELEPHONE (415) ~~531-1877~~

5915 LEONA STREET

94605

531-1877

December 16, 1982.

Mr. Ron Douglas
Harrison St. Garage
1432 Harrison Street
Oakland, Ca. 94612

LABOR - MATERIAL - REPAIRS -
INSULATION GAS TANK

1432 Harrison Street, Oakland, Ca.

\$ 4,201.70

W. Vernon Bernard
W. Vernon Bernard
5915 Leona Street
Oakland, Ca. 94605

12/16 Paid in full W.V.B.

JONATHAN S. LEO
CYNTHIA L. KOEHLER
HELLER, EHRMAN, WHITE & MCAULIFFE
333 Bush Street
San Francisco, CA 94104-2878
(415) 772-6000

2/5/91

Attorneys for Petitioners
ALVIN BACHARACH and BARBARA BORSUK

BEFORE THE CALIFORNIA
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94612)
_____)

DECLARATION OF MARK BORSUK

I, MARK BORSUK, hereby declare:

1. I am an attorney licensed to practice law in the State of California and represent Alvin Bacharach and Barbara Borsuk in various matters involving the Harrison Street Garage. I have personal knowledge of the facts herein alleged.

2. On or about August 28, 1990, I contacted Phillip W. Musser, the President of the Robert J. Miller Company. Mr. Musser informed me at that time that he submitted a bid in May 1982 to Douglas Motor Services ("Douglas") regarding removal and replacement of an underground storage tank at the Harrison Street Garage. Mr. Musser stated unequivocally that he informed Douglas in April of 1982 that there was a leakage problem. Mr. Musser

provided the results of his testing, and a bid to pull and replace the tank to Douglas at that time. Thus, Douglas knew in early 1982 that at least one of the tanks was leaking.

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

Executed this 5 day of February 1991, at San Francisco, California.


MARK BORSUK

INDEX TO EXHIBITS

1. Letters from Alameda County Health Care Services Agency re Harrison Street Garage dated July 31, 1990, August 27, 1990 and September 24, 1990.
2. January 16, 1991 letter from Jonathan S. Leo to Mark N. Thomson re January 14, 1991 meeting.
3. Leases for the Harrison Street Garage from 1972 - 1988.
4. Installation Permits for underground storage tanks issued by the City of Oakland.
5. Permit to operate underground storage tank issues by Alameda Health Care Services Agency.
6. Hazardous Substance Storage Statements filed with the California Water Resources Control Board.
7. October 28, 1975 letter from Alvin Bacharach to Sanford Douglas re reimbursement of costs for replacement of underground storage tanks.
8. Declaration of Steven Davis.
9. Letters from SCS Engineers dated October 12, 1990 and November 14, 1990 regarding removal of product from USTs at the Harrison Street Garage.
10. July 19, 1988 letter from Alvin Bacharach to Leland Douglas regarding Douglas' ongoing responsibility for UST related cleanup.
11. April 18, 1990 Second Notice of Violation issued by Alameda County Health Care Services against Douglas Motor Services.
12. November 27, 1990 letter from Jonathan S. Leo to Paul M. Smith regarding addition of Douglas to the Cleanup Order.
13. December 13, 1990 letter from Jonathan S. Leo to Mark Thomson regarding Cleanup Order.
14. February 6, 1991 letter from Jonathan S. Leo to Mark Thomson regarding appeal to the State Board.
15. January 25, 1991 letter from Paul M. Smith to SCS Engineers regarding Harrison Street Garage site characterization/assessment schedule.

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, Leasee
Jonathan Redding, Fitzgerald, Abbot & Beardley
Filas

SERVICES

AGENCY

J. KEARS, Director



File # P 062 127 745

Telephone Number: (415)

1990

Bacharach & Ms. Barbara Borsuk
1000 Road #100
CA 94526

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

. Bacharach and Ms. Borsuk:

received a letter from Fitzgerald, Abbott and Beardsley dated 8/22, 1990 and a Preliminary Subsurface Investigation Report by Subsurface Consultants, Inc. dated August 18, 1990. The report identified substantial leaks of petroleum products from underground storage tanks and probable impact to groundwater.

A preliminary site assessment should be conducted immediately to determine the extent of contamination to the groundwater. According to Section 2652 of Title 23 of the CA Code of Regulations (CCR):

Within 24 hours after the release has been detected, or should have been detected, using required monitoring, the operator shall notify the local agency and the State Office of Emergency Services or the regional board.

Within 5 working days of detecting the release, the operator or permittee shall submit to the local agency a full written report to include all of the following information which is known at the time of filing the report:

- 1) List the type, quantity, and concentration of hazardous materials released.
- 2) The results of all investigations completed at that time to determine the extent of soil or groundwater or surface water contamination due to the release.
- 3) Method of cleanup implemented to date, proposed cleanup actions, and approximate cost of actions taken to date.
- 4) Method and location of disposal of the released hazardous substance and any contaminated soils or groundwater or surface water (indicate whether a hazardous waste manifest[s] is utilized).
- 5) Facility operators name and phone number.

Mr. Bacharach & Ms. Borsuk
August 27, 1990
Page 2 of 2

Until cleanup is complete, the operator or permittee shall submit reports to the local agency and the regional board every 3 months or at a more frequent interval specified by a responsible agency. The reports shall include the information requested in 2, 3, and 4 above.

The reporting requirements of this section are in addition to any reporting requirements specified by Section 13271 of Division 7 of the Water Code and other laws and regulations.

You are requested to conduct an assessment (within 5 days of the receipt of this letter) of the extent of the contamination which has occurred at the above site. You are also requested to set a schedule within 10 days for the completion of the various phases of the remediation, including the identification of the number of tanks on the property and a schedule for tank removal or permitting.

Cases are prioritized by our department based upon the potential threat to human health and the environment to which they pose. This case is given a high priority for investigation/remediation due to the potential for the presence of free petroleum product and the contamination to groundwater.

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, SFERWQCB

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



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. Borsuk
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

HELLER, EHRMAN, WHITE & MCAULIFFE
ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0838
TELEPHONE (415) 326-7800

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW · TELEX 184-996 · FACSIMILE (415) 772-6268
TELEPHONE (415) 772-6000

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-1098
FACSIMILE (206) 447-0849
TELEPHONE (206) 447-0900

601 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-5758
FACSIMILE (213) 614-1868
TELEPHONE (213) 689-0200

January 16, 1991

1201 PACIFIC AVENUE
TACOMA, WASHINGTON 98402-4308
FACSIMILE 206 572-6743
TELEPHONE 206 572-6666

1300 S.W. FIFTH AVENUE
PORTLAND, OREGON 97201-5698
FACSIMILE (503) 241-0850
TELEPHONE (503) 227-7400

550 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501-3571
FACSIMILE 907 277-1920
TELEPHONE 907 277-1900

JONATHAN SEBASTIAN LEO
DIRECT DIAL (415) 772-6068

17409-0001

VIA TELECOPY

Mark N. Thomson, Jr., Esq.
Deputy District Attorney
Office of the Alameda County District Attorney
Consumer and Environmental Protection Division
7677 Oakport Street, Suite 400
Oakland, California 94621

Alvin Bacharach and Barbara Jean Borsuk
Harrison Street Garage

Dear Mr. Thomson:

I am writing with regard to our meeting in your office on Monday, January 14, 1990 to confirm my understanding of our discussion and the decisions you made and communicated to me at that meeting. On behalf of my clients, Alvin Bacharach and Barbara Jean Borsuk, I requested that you substitute Douglas Motor Services ("Douglas") for my clients on the Health & Safety Code section 25299.37(c) order issued to them regarding the removal of underground storage tanks ("USTs") and remediation of contamination at the Harrison Street Garage. The basis for that request was documentation I provided to you which I believe (and argued to you) unmistakably reflected Douglas' status as owner of the USTs on the property. In the alternative, I requested that Douglas be named as an additional party on the order.

You refused to substitute Douglas for my clients on the order. It is your position that my clients, and not Douglas, are the owners of the USTs on the property.

Mark Thomson, Esq.
January 16, 1991

Page 2

In addition, you refused to add Douglas as an additional party to the order. While you acknowledged that Douglas was the operator of the USTs when the underground storage tank statute was enacted in 1984, you nevertheless emphasized that your primary concern was to obtain speedy remediation of the site. You did not state, however, that adding Douglas to the order would in any way slow down the remediation. You stated only that you believed that it was "not inappropriate" for my clients to be the only parties named on the order.

Finally, you indicated that if my clients did not comply with the order promptly by conducting a site assessment, they could expect an enforcement action to follow.

Please let me know if I have in any way misstated or mischaracterized your position.

Very truly yours,



Jonathan S. Leo

cc: Mark Borsuk, Esq.
Mr. Alvin Bacharach
Mr. Paul Smith

bcc: Jonathan P. Hayden, Esq.
Thomas M. Donnelly, Esq.
Cynthia Koehler, Esq.
Mr. John Cummings

~~or reletting, and Lessor may institute action for the whole of such deficiency immediately upon effecting any such letting and shall not thereafter be precluded from further like action in the event such letting or reletting is not made and 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 the 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 at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent~~

Handwritten initials: BJB, JAC, JLN

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.

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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 ~~XXXXXX~~ 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 ~~XXXXXX~~ 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 aforesaid in this paragraph provided. In the event that Lessor does not elect to make such repairs which cannot be made in ~~XXXXXX~~ or such repairs cannot be made under the laws and regulations, this lease may be terminated at the option of either party. (30)

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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 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 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 unto him.

18. **SALE 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 look solely to 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 thereupon 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 no part of the premises be taken) be condemned for a public or quasi-public use by right of eminent domain, with or without litigation 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 event 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 Lessor and Lessee shall have no claim thereto, 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"), 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, 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 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 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 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 Lessor'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 Lessor, 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 Lessor, 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 rental is paid as provided in paragraph 2 hereof, in the instance of Lessor, or to such other address as may be from time to time furnished in writing by Lessor to Lessee or by Lessee to Lessor, each of the parties hereto waiving personal or any other service than as in the 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 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.

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 on 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 with (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 (or 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 mortgagee 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 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.

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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 the day and year first hereinabove written.

LESSOR:

LESSEE:

Alvin H. Bacharach
ALVIN H. BACHARACH
Barbare Jean Borsuk
BARBARE JEAN BORSUK

DOUGLAS MOTOR SERVICE, a partnership
By: James R. Douglas
John 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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D. R. M.

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

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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 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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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.

20. 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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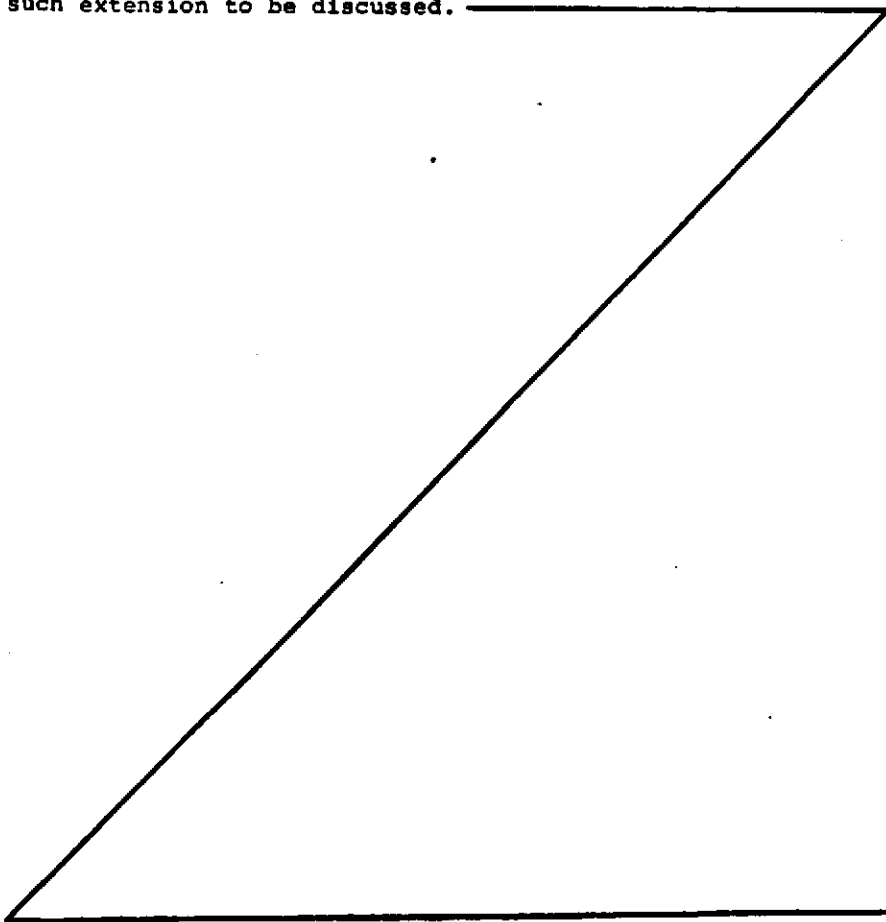
as a credit against the \$50 in tax increase due December 1, 1973, and the remaining \$40 of it as a credit against the \$50 due as a tax increase for April 1, 1974, making Lessee liable to pay the difference of amounts owing for tax increase, or \$10, on April 1, 1974. In connection with the foregoing, 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 32. 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 ^{February 27, 1979} 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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33. 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.

34. 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.

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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.

35. 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, forceable entry, and 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.

Handwritten initials and signature:
DAB
R. K. K.
J. H. L.



OAKLAND REALTY & INVESTMENT CO.

2825 PARK BOULEVARD
OAKLAND, CALIFORNIA 94618
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 heretofore 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-one 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 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. 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 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 overloaded 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

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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 tenantable 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 said alternative 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 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 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 Lessor 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 he 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 re-enter and possess itself of said premises as of its original estate.

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or anything, and Lessor may institute action for the whole of such deficiency immediately upon effecting such repairs and shall not thereafter be precluded from further like action in the event such letting or letting shall not embrace the whole unexpired portion of the term hereof, or Lessor may monthly, or at such shorter intervals as it may see fit, exact payment of said deficiency then existing, and the Lessee agrees to pay said 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 letting, 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 at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved on this lease for the balance of the term hereof, over the then reasonable value of the premises for such period.

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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.

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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 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 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 provided 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, such repairs cannot be made under the laws and regulations, this lease may be terminated at the option of either party.

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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 unto him.

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18. **SALE 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 look solely 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 thereupon 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 no part of the premises be taken) be condemned for a public or quasi-public use by right of eminent domain, with or without litigation, 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 event 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 Lessor and Lessee shall have no claim thereto, 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"), 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. 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 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 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 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 damages occasioned thereby.

24. **SURRENDER OF LEASE.** No act or conduct of Lessor, 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 Lessor, 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 rental is paid as provided in paragraph 2 hereof, in the instance of Lessor, or to such other address as may be from time to time furnished in writing by Lessor to Lessee or by Lessee 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 sum due 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.

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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 thirty (30) 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 (or 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 mortgagee 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 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 28-34 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 thereunto duly authorized by resolution of said corporations, in duplicate the day and year first hereinabove written.

LESSOR:

LESSEE:

Alvin H. Bacharach
ALVIN H. BACHARACH

DOUGLAS MOTOR SERVICE, a partnership

Douglas Barton

Barbara Jean Borsuk
BARBARA JEAN BORSUK

(HAB) *DAD* *BJB*

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, X 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. X 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. X

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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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 the 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.

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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, ^{\$90.} ~~\$100.~~ Lessee to pay one half of such increase December 1, 1973, or ~~\$50.~~ ^{\$45} and the other half of such increase on April 1, 1974, or ~~\$50.~~ ^{\$45} However, ~~if~~ ^{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.

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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.

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31. The parties hereto further agree that Lessee or any of the general partners who remain as general partner in the partnership of lessee at the time of expiration of the term of this Lease, shall have the right to meet with Lessor on or before January 31, 1981, to discuss the possibility of further extension and Lessee shall have the first right of refusal to lease 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 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 understood 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

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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.

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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 parking taxes or restricting hours of driving downtown 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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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.

34. 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

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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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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, forceable entry, and 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.

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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, 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, 1981 and ending on the last day of March, 1988.

(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 of the premises prior to the commencement of the term, Lessee shall be 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.

See 2. RENTAL. As rental for the demised premises Lessee hereby agrees to pay thirty-eight hundred Dollars (\$ 38,000.00) per month in advance on the 1st day of each month in legal money of the United States of America, or its equivalent.

Rider or Attachment the sum of thirty-eight hundred Dollars (\$ 38,000.00)

NO. 1 per month in advance on the 1st day of each month in legal money of the United States of America, or its equivalent.

For any partial month shall be prorated at the rate of 1/30th of monthly rent per day. 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 hereby agrees to pay to Lessor the sum of 9,100.00 of which is hereby acknowledged. Lessor agrees that \$3,900.00 of said sum shall be applied as security deposit 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 \$5,200.00 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 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 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 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

...without the prior written consent of Lessor, no musical instrument of any sort or any noise making device will be operated on a... premises for the purpose of attracting trade or other... Lessee further agrees not to... premises or any part thereof, for any immoral or other... prohibited by law or a... of insurance upon the building in which said demised premises may be located, or cause a... policy covering said building or any part thereof. If any act on the part of Lessee or use of the premises... 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 construction, 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 tenantable 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 such alternative 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 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 therefor, and should the same not be caused by Lessee or by reason of Lessee's occupation, 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 or mobile improvements, shall be the property of Lessor and shall remain upon and be surrendered with the premises, except that Lessee will, upon demand by 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 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 post appropriate notices to avoid any liability on account thereof. Lessee agrees to indemnify and save harmless Lessor from all liens, claims and 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 thereon sustained by Lessee, nor shall Lessee be entitled to any abatement of rental by reason of the exercise by Lessor 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 terminate and shall in nowise 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 re-enter and repossess 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 free from all liability, penalties, losses, damages, costs, expenses, costs of action, claims and/or judgments, including, without limitation, any injury or damage to any person or persons, including without limitation, Lessor, its servants, agents and independent contractors, and to the 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 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 in person 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 Lessor or Lessee in about or upon the demised premises, as the case may be, which he 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 cases, 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, 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 increase as 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 ~~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 the amount of such taxes and assessments levied or assessed against the demised premises and appurtenances thereto for the fiscal year of the assessment~~ ~~paying the same~~ 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 or 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 provided for 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; 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 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 evict, 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 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, 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 and 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 let 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 said letting or letting, not to exceed, however, the amount of the original term hereof, after deducting therefrom the cost of such letting or letting, including the cost of any~~

See
Rider
No. 3
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alterations or other changes) and the rental hereof shall be...
Lessor may institute action for the whole or a part of the premises...
which unexpired portion of the term hereof... Lessor may...
most of and deficiency then existing... and the Lessee agrees to pay...
time when called upon by Lessor so to do... and should this lease not be terminated...
or referring, at any time thereafter... terminate it... should this lease...
terminated by Lessor by reason of any breach hereof by Lessee...
Lessor the month of the time of such termination of the excess...
received in this lease for the balance of the term hereof... over the then reasonable value of the premises...

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 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 place 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.

thirty (30) days
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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 a reasonable time and 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 place 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.

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 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 of the arbitrator so appointed, 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 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 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 unto him.

18. **SALE 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 and in favor of the covenants or conditions, express or implied, herein contained in favor of Lessee, and in such event Lessee agrees to look solely 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 thereupon 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 no part of the premises be taken) be condemned for a public or quasi-public use by right of eminent domain, with or without litigation, 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 event 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 Lessor and Lessee shall have no claim thereto, 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"), 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, 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 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 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 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 Lessor, 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 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 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 rental is paid as provided in paragraph 2 hereof, in the instance of Lessor, or to such other address as may be from time to time furnished in writing by Lessor to Lessee or by Lessee 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 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 heretofore 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.

20. MISCELLANEOUS. (a) It is agreed by and between the parties hereto that all the agreements, terms, conditions and covenants of this lease shall be deemed to be a part of this lease, whether technically covenants or conditions, and shall be deemed to exist for the entire term of this lease, and in the event of breach of any of said agreements, conditions or covenants, Lessor has the right to terminate this lease.

(b) Lessee agrees at any time and from time to time when (10) days of written request from Lessor is received, to acknowledge and deliver to Lessor a statement in writing or listing that this lease is unmodified and in full force and effect, or if there have been modifications, that the same is in full force and effect as modified, and stating the amount of rent 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 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 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 hereinabove written.

LESSOR:

Alvin H. Bacharach
ALVIN H. BACHARACH

Barbara Jean Borsuk
BARBARA JEAN BORSUK

LESSEE:

DOUGLAS MOTOR SERVICE, a partnership
by Weland Douglas
WELAND DOUGLAS partner

by Ronald Douglas
RONALD DOUGLAS partner

by Sanford Douglas
SANFORD DOUGLAS partner

by David Flett
DAVID FLETT partner

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 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.

9. **HOLD HARMLESS.** This lease is made upon the express condition that Lessee agrees 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 Lessee 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 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 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 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 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, 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 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 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 said letting or reletting, not to exceed, however, the balance of the original term hereof, after deducting therefrom the cost of such letting or reletting (including the cost of any

JAC
RMP
BGB

JAC

BGB

J.P.R.

CITY OF OAKLAND

Permit to Excavate and Install, Repair, or Remove Inflammable Liquid Tanks.

Test Permit

Oakland, California, August 27

75

PERMISSION IS HEREBY GRANTED TO install & remove XX Gasoline tank and excavate commencing feet inside curb

on the N side of Harrison Street 250 feet E of 14 Street Street

House No. L 1432 Harrison St. Street 14 Avenue

Owner Douglas Motors Present Storage 2-550 gal. tanks.

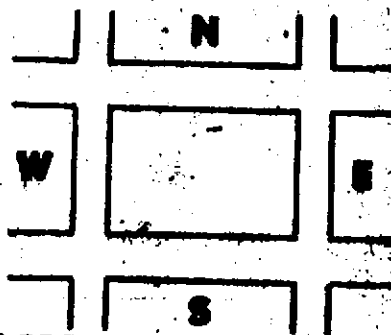
Applicant D.L. Stevens Co. Address 1432 Harrison Phone

Dimensions of street (sidewalk) surface to be disturbed 5' x 13' Number of Tanks 1 Capacity 1,000 Gallons each

Remarks: Remove 2-550 gal. tank and install 1-1,000 gal. tank

This Permit is granted in accordance with existing City Ordinances.
Owner hereby agrees to remove tanks on discontinuance of use or when notified by the City Authorities.
When installing, removing or repairing tanks, no open flame to be on or near premises.

Approved _____ Fire Marshal
Approved OK per Mark Ng 8-27-75 (see white office copy)
Drainage Division Engineering Dept.



EXCAVATING PERMIT

Issued in accordance with Ord. No. 278 CMS, Sec. 6-2.84

_____ square feet of digging or removal granted.

The receipt of \$ _____ special deposit is hereby acknowledged.

GENERAL DEPOSIT.

BUREAU OF PERMITS AND LICENSES.

Inspection Fee Paid 30.00 Cash

Received by J. Griffin Rec. # 12676

FIRE PREVENTION BUREAU

CERTIFICATE OF TANK AND EQUIPMENT INSPECTION

Inspected and passed on Sept 5

By James J. Moore & Co.

NOTICE

Before Covering Tanks, Above Certificate Must Be Filed.
When ready for inspection notify Fire Prevention Bureau 378-0831

THIS PERMIT MUST BE LEFT ON THE WORK AS AUTHORITY THEREFOR.

Oak

Copy for INSPECTOR

Excavation Permit Granted

CITY OF OAKLAND

Permit to Excavate and Install, Repair, or Remove Inflammable Liquid Tanks.

Test Permit

Oakland, California,

November 12, 1982

PERMISSION IS HEREBY GRANTED TO install remove Gasoline tank and excavate commencing _____ feet in _____ feet

on the east side of Harrison Street

House No. 1432 Harrison Street Street Avenue _____ feet _____ of _____ Street Avenue _____

Owner Douglas Parking Company Present Storage _____ Address 1432 Harrison Street Phone _____

Applicant Walter R. Schneider, Inc. Address 3885 Rhoda Ave. Oakland 94602 Phone 532-2026

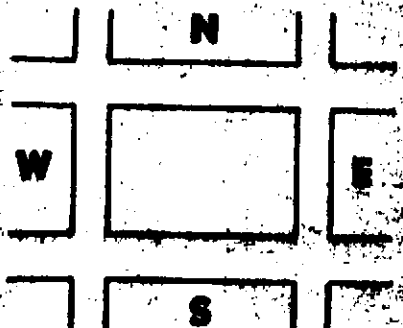
Dimensions of street (sidewalk) surface to be disturbed _____ X _____ Number of Tanks 1 Capacity 1000 Gallons each

Remarks: _____

This Permit is granted in accordance with existing City Ordinances.
Owner hereby agrees to remove tanks on discontinuance of use or when notified by the City Authorities.
When installing, removing or repairing tanks, no open flame to be on or near premises.

Approved _____
Fire Marshal

Approved _____
Drainage Division Engineering Dept.



EXCAVATING PERMIT

Issued in accordance with Ord. No. 278 CMS, Sec. 6-2.04

_____ square feet of digging or removal granted.

The receipt of \$ _____ special deposit is hereby acknowledged.

GENERAL DEPOSIT.

BUREAU OF PERMITS AND LICENSES.

Inspection Fee Paid 40.00 ck#2105 rec#17938

Received by _____
FIRE PREVENTION BUREAU

CERTIFICATE OF TANK AND EQUIPMENT DEPARTMENT

Inspected and passed on Dec 2
by David J. M...

NOTICE

Before Covering Tanks, Above Certificate Must Be Signed
When ready for inspection notify Fire Prevention Bureau 532-2026

THIS PERMIT MUST BE LEFT ON THE WORK AS AUTHORITY THEREON.

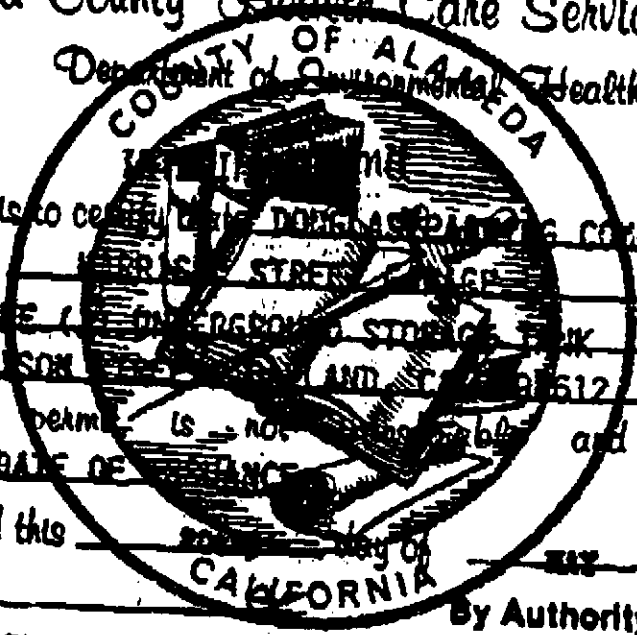
RCV BY: XEROX TELECOPIER 7010 ; 8-14-90 2:23PM ; 415 568 3706
AUG 14 '90 14:29 FROM ALCO HAZMAT

4158295493;# 2

PAGE.002

Alameda County Health Care Services Agency

Department of Environmental Health



This is to certify that DOUGLAS PAINTING COMPANY
doing business as MERRIS STRENGTH is permitted
to operate a DRY CLEAN DRYER STORAGE TANK
at 1432 HARRISON STREET, OAKLAND, CA 94612

This permit is not transferable and is good until
6 MONTHS FROM DATE OF ISSUANCE

Issued this 20th day of SEP 19 88

Sanitarian

By Authority of
County Health Officer

CO-1111111

APPLICATION FOR PERMIT TO OPERATE UNDERGROUND STORAGE TANK

- 01 NEW PERMIT 05 RENEWED PERMIT 07 TANK CLOSED 09 DELETE FROM FILE (NO FEE)
- 02 CONDITIONAL PERMIT 06 AMENDED PERMIT 08 MINOR CHANGE (NO SURCHARGE)

I OWNER

NAME (CORPORATION, INDIVIDUAL OR PUBLIC AGENCY) DOUGLAS PARKING CO. ← <i>Notice name change</i>		PUBLIC AGENCY ONLY <input type="checkbox"/> 01 FED <input type="checkbox"/> 02 STATE <input type="checkbox"/> 03 LOCAL	
STREET ADDRESS 1782 WEBSTER ST.	CITY OAKLAND	STATE CA	ZIP 94612

II FACILITY

FACILITY NAME HARRISON ST. GARAGE		DEALER/FOREMAN/SUPERVISOR MEXICO VALBUENA <i>EARL GLENN</i>	
STREET ADDRESS 1422 HARRISON ST.		NEAREST CROSS STREET 14TH ST.	
CITY OAKLAND	COUNTY ALAMEDA	ZIP 94612	
MAILING ADDRESS 1781 WEBSTER ST.	CITY OAKLAND	STATE CA	ZIP 94612
PHONE N/AREA CODE 415-432-2448	TYPE OF BUSINESS <input checked="" type="checkbox"/> 01 GASOLINE STATION <input checked="" type="checkbox"/> 02 OTHER <i>PARKING GARAGE</i>		
NUMBER OF CONTAINERS <i>1</i>	RURAL AREAS ONLY	TOWNSHIP	RANGE SECTION

III 24 HOUR EMERGENCY CONTACT PERSON

DAYS: NAME (LAST NAME FIRST) AND PHONE N/AREA CODE YASQUEZ, MAX 415-432-2448	NIGHTS: NAME (LAST NAME FIRST) AND PHONE N/AREA CODE YASQUEZ, MAX 415-432-2448
---	---

COMPLETE THE FOLLOWING ON A SEPARATE FORM FOR EACH CONTAINER

IV DESCRIPTION

A. <input checked="" type="checkbox"/> 01 TANK <input type="checkbox"/> 04 OTHER:	CONTAINER NUMBER 005
B. MANUFACTURER (IF APPROPRIATE): UNK	YEAR MFG: C. YEAR INSTALLED 1991 <input type="checkbox"/> UNKNOWN
D. CONTAINER CAPACITY: 2000 GALLONS <input type="checkbox"/> UNKNOWN	E. DOES THE CONTAINER STORE: <input type="checkbox"/> 01 WASTE <input checked="" type="checkbox"/> 02 PRODUCT
F. DOES THE CONTAINER STORE MOTOR VEHICLE FUEL OR WASTE OIL? <input checked="" type="checkbox"/> 01 YES <input type="checkbox"/> 02 NO IF YES CHECK APPROPRIATE BOX(ES): <input checked="" type="checkbox"/> 01 UNLEADED <input type="checkbox"/> 02 REGULAR <input type="checkbox"/> 03 PREMIUM <input type="checkbox"/> 04 DIESEL <input type="checkbox"/> 05 WASTE OIL <input type="checkbox"/> 06 OTHER	

V CONTAINER CONSTRUCTION

A. THICKNESS OF PRIMARY CONTAINMENT: <input type="checkbox"/> 01 GAUGE <input type="checkbox"/> 02 INCHES <input type="checkbox"/> 03 CM <input checked="" type="checkbox"/> 04 UNKNOWN	<i>Record 2</i> <i>[2 Abandoned]</i>
B. <input type="checkbox"/> 01 VAULTED (LOCATED IN AN UNDERGROUND VAULT) <input type="checkbox"/> 02 NON-VAULTED <input checked="" type="checkbox"/> 03 UNKNOWN	
C. <input type="checkbox"/> 01 DOUBLE WALLED <input type="checkbox"/> 02 SINGLE WALLED <input type="checkbox"/> 03 LINED	
D. <input type="checkbox"/> 01 CARBON STEEL <input type="checkbox"/> 02 STAINLESS STEEL <input type="checkbox"/> 03 FIBERGLASS <input type="checkbox"/> 04 POLYVINYL CHLORIDE <input type="checkbox"/> 05 CONCRETE <input type="checkbox"/> 06 ALUMINUM <input type="checkbox"/> 07 STEEL CLAD <input type="checkbox"/> 08 BRONZE <input type="checkbox"/> 09 COMPOSITE <input type="checkbox"/> 10 NON-METALLIC <input checked="" type="checkbox"/> 11 UNKNOWN <input type="checkbox"/> 12 OTHER:	

CONTAINER CONSTRUCTION

STATE ID NUMBER 8800001221290

01 RUBBER LINED 02 ALKYD LINING 03 EPOXY LINING 04 PHENOLIC LINING 05 GLASS LINING
 06 UNLINED 08 UNKNOWN 09 OTHER:

F. 01 POLYETHYLENE WRAP 02 VINYL WRAPPING 03 CATHODIC PROTECTION 04 UNKNOWN 05 NONE
 06 TAR OR ASPHALT 09 OTHER:

VI PIPING

A. ABOVEGROUND PIPING: 01 DOUBLE-WALLED PIPE 02 CONCRETE-LINED TRENCH 03 GRAVITY
(CHECK APPROPRIATE BOX(ES)) 04 PRESSURE 05 SUCTION 06 UNKNOWN 07 NONE

B. UNDERGROUND PIPING: 01 DOUBLE-WALLED PIPE 02 CONCRETE-LINED TRENCH 03 GRAVITY
(CHECK APPROPRIATE BOX(ES)) 04 PRESSURE 05 SUCTION 06 UNKNOWN 07 NONE

VII LEAK DETECTION

01 VISUAL 02 STOCK INVENTORY 04 VAPOR SNIFF WELLS 05 SENSOR INSTRUMENT
 06 GROUND WATER MONITORING WELLS 07 PRESSURE TEST 09 NONE 10 OTHER:

VIII CHEMICAL COMPOSITION OF MATERIALS STORED IN UNDERGROUND CONTAINERS

*IF YOU CHECKED YES TO IV-F YOU ARE NOT REQUIRED TO COMPLETE THIS SECTION

CURRENTLY STORED	PREVIOUSLY STORED	DELETE	SAGE (IF KNOWN)	CHEMICAL (DO NOT USE COMMERCIAL NAME)
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		
<input type="checkbox"/> 01	<input type="checkbox"/> 02	<input type="checkbox"/> 03		

CHECK STATE BOARD CHEMICAL CODE LISTING FOR POSSIBLE SYNERGISM.

IS CONTAINER LOCATED ON AN AGRICULTURAL FARM? 01 YES 02 NO

THIS FORM HAS BEEN COMPLETED UNDER THE PENALTY OF PERJURY AND, TO THE BEST OF MY KNOWLEDGE, IS TRUE AND CORRECT.

PERSON FILING (SIGNATURE) _____ PHONE N/AREA CODE _____

FOR LOCAL AGENCY USE ONLY

ADMINISTRATING AGENCY		CITY CODE	COUNTY CODE
CONTACT PERSON		PHONE N/AREA CODE	
LAST INSPECTION	IN COMPLIANCE <input type="checkbox"/> 01 YES <input type="checkbox"/> 02 NO	PERMIT APPROVAL DATE	TRANSACTION DATE
		LOCAL PERMIT ID #	

Official Register Form
California Water Resources Control Board
Hazardous Substance Storage Statement



Who Must File: Each person storing hazardous substances in any underground container must file this form no later than July 1, 1984 (After October 1, 1984 and no later than January 1, 1985 for tanks used on farms).

Definition of Underground Containers: The law applies to concrete sumps, nonvaunted buried tanks or other underground containers (Water Code section 13173). All containers, including weathered pits, ponds, lagoons and sumps that are below the normal ground surface level must register. A tank sitting on the ground is not included. Containers partially beneath the surface are included. Lined or unlined pits, ponds and lagoons are covered if earth has been removed from the storage area to construct the facility. Normal grading is not considered construction below ground level.

Definition of Hazardous Substance: Any substance listed in Section 6762 of the Labor Code or in Section 25316 of the Health and Safety Code. This includes gasoline, diesel fuel, oil, industrial solvents, pesticides, herbicides and fungicides. If the material must be carried by a registered hauler, disposed of at a hazardous waste site, is explosive, generates pressure due to heat or decomposition or would harm humans or wildlife you must register.

Fee: For each tank registered a \$10 fee must be paid (except that retail gasoline stations pay \$5 per tank).

Penalties: For failure to file, the penalty is \$500-\$5,000 per day. If you fail to file information you can be fined up to \$20,000 for each day the information is incorrect and has not been corrected.

Confidentiality: If you have information protected by trade secret laws, please attach a list of the information on this form that is confidential and the justification for confidentiality, including specific citations of relevant statutory and case law.

Multiple Containers: Fill I and II on one form and leave it blank on all the remaining forms. Attach all forms together securely. If you own more than 50 tanks you can file information on computer tape. Cal 916/324-1262 for information.

This is not a Permit Application. All Underground Tanks will be subject to local regulation. Some jurisdictions have already begun programs. Check with your local county government for further information.

NOTE: ALL UNDERGROUND CONTAINERS MUST REGISTER EVEN IF STATE AND/OR LOCAL PERMITS ARE IN FORCE.

I Owner

Name (Corporation, Individual or Public Agency): <u>DEGGAN PARKING CO.</u>				
Street Address: <u>1721 WEUSTEE ST.</u>				
City: <u>OAKLAND</u>	State: <u>CA</u>	ZIP: <u>94612</u>		

II Facility

Facility Name: <u>HARRISON ST. GARAGE</u>		Owner/Foreman/Supervisor: <u>MAXIMO VASQUEZ</u>		
Street Address: <u>1432 HARRISON ST.</u>				
City: <u>OAKLAND</u>	County: <u>ALAMEDA</u>	State: <u>CA</u>	ZIP: <u>94612</u>	
Mailing Address: <u>1721 WEUSTEE ST.</u>				
Phone #/area code: <u>(415) 452-2440</u>		Type of Business: <input checked="" type="checkbox"/> Motor Vehicle Fuel Station <input type="checkbox"/> Other:		
Number of Tanks at this Facility: <u>2</u>	Rural Areas Only:	Township:	Range:	Section:

III 24 Hour Emergency Contact Person

Days: Always full name (last and first) and phone #/area code: <u>VASQUEZ, MAX (415) 452-2440</u>	Nights: Name (last name first) and phone #/area code: <u>VASQUEZ, MAX (415) 522-4428</u>
--	---

COMPLETE THE FOLLOWING ON A SEPARATE FORM FOR EACH CONTAINER

IV Description

A. <input checked="" type="checkbox"/> Tank <input type="checkbox"/> Sump <input type="checkbox"/> Lagoon, Pit or Pond <input type="checkbox"/> Other: _____	Container Number (if none, a no. number, assign one): <u>005</u>
B. Manufacturer (if appropriate): <u>UNK</u> Year of Mfg.: <u>1986</u>	C. Year Installed: <u>1981</u> <input type="checkbox"/> Unknown
D. Container Capacity: <u>1000</u> gallons <input type="checkbox"/> Unknown	E. Container Repairs: <input checked="" type="checkbox"/> None <input type="checkbox"/> Unknown <input type="checkbox"/> Yes Year: _____
F. Is Container currently used? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. If No, year of last use: _____ <input type="checkbox"/> Unknown	
G. Does the Container Store (Check One): <input type="checkbox"/> Waste <input checked="" type="checkbox"/> Product	
H. Does the Container Store Motor Vehicle Fuel or Waste Oil? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. If Yes, Check appropriate box(es): <input checked="" type="checkbox"/> Unleaded <input type="checkbox"/> Regular <input type="checkbox"/> Premium <input type="checkbox"/> Diesel <input type="checkbox"/> Waste Oil <input type="checkbox"/> Other (List): _____	

V Container Construction

A. Thickness of Primary Containment: _____ <input type="checkbox"/> Gauge <input type="checkbox"/> Inches <input type="checkbox"/> cm <input checked="" type="checkbox"/> Unknown
B. <input type="checkbox"/> Vaulted (Located in an underground Vault.) <input type="checkbox"/> Non-vaulted <input checked="" type="checkbox"/> Unknown
C. <input type="checkbox"/> Double Walled <input type="checkbox"/> Single Walled <input type="checkbox"/> Lined <input type="checkbox"/> Wrapped <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> None
D. <input type="checkbox"/> Carbon Steel <input type="checkbox"/> Stainless Steel <input type="checkbox"/> Fiberglass <input type="checkbox"/> Polyvinyl Chloride <input type="checkbox"/> Concrete <input type="checkbox"/> Aluminum <input type="checkbox"/> Steel Clad <input type="checkbox"/> Bronze <input type="checkbox"/> Composite <input type="checkbox"/> Non-metallic <input type="checkbox"/> Earthen Walls <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> Other: _____
E. <input type="checkbox"/> Rubber Lined <input type="checkbox"/> Alkyd Lining <input type="checkbox"/> Epoxy Lining <input type="checkbox"/> Phenolic Lining <input type="checkbox"/> Glass Lining <input type="checkbox"/> Clay Lining <input type="checkbox"/> Unlined <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> Other: _____
F. <input type="checkbox"/> Polyethylene Wrap <input type="checkbox"/> Vinyl Wrapping <input type="checkbox"/> Cathodic Protection <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> None <input type="checkbox"/> Other: _____

**Official Registration Form
California Water Resources Control Board
Hazardous Substance Storage Statement**



Who Must File: Each person storing hazardous substances in any underground container must file this form no later than July 1, 1984 (After October 1, 1984 and no later than January 1, 1985 for tanks used on farms).

Definition of Underground Containers: The law applies to "concrete sumps, nonvaulted buried tanks or other underground containers" (Water Code section 13173) All containers, including earthen walled pits, ponds, lagoons and sumps, that are below the normal ground surface level must register. A tank sitting on the ground is not included. Containers partially beneath the surface are included. Lined or unlined pits, ponds and lagoons are covered if earth has been removed from the storage area to construct the facility. Normal grading is not considered construction below ground level.

Definition of Hazardous Substance: Any substance listed in Section 6382 of the Labor Code or in Section 25316 of the Health and Safety Code. This includes gasoline, diesel fuel, all industrial solvents, pesticides, herbicides and fumigants. If the material must be carried by a registered hauler, disposed of at a hazardous waste site, is explosive, generates pressure due to heat or decomposition or would harm humans or wildlife you must register.

the tank. Wastes are included.

Fee: For each tank registered a \$10 fee must be paid except that retail gasoline stations pay \$5 per tank.

Penalties: For failure to file, the penalty is \$500-\$5,000 per day. If you falsify information, you can be fined up to \$20,000 for each day the information is incorrect and has not been corrected.

Confidentiality: If you have information protected by trade secret laws, please attach a list of the information on this form that is confidential and the justification for confidentiality, including specific citations of relevant statutory and case law.

Multiple Containers: Fill I and II on one form and leave it blank on all the remaining forms. Attach all forms together securely. If you own more than 50 tanks you can file information on computer tape. Call 916/324-1282 for information.

This is not a Permit Application. All Underground Tanks will be subject to local regulation. Some jurisdictions have already begun programs. Check with your local county government for further information.

NOTE: ALL UNDERGROUND CONTAINERS MUST REGISTER EVEN IF STATE AND/OR LOCAL PERMITS ARE IN FORCE.

I Owner

Name (Corporation, Individual or Public Agency)			
Street Address		City	State ZIP

II Facility

Facility Name		Owner/Foreman/Supervisor	
Street Address			Nearest Cross Street
City		County	ZIP
Mailing Address		City	State ZIP
Phone Number		Type of Business	
		<input type="checkbox"/> Motor Vehicle Fuel Station <input type="checkbox"/> Other	
Number of Tanks at this Facility	Rural Areas Only	Township	Range Section

III 24 Hour Emergency Contact Person

Day Name (last, first, initial) and Phone Number	Night Name (last, first, initial) and Phone Number
--	--

COMPLETE THE FOLLOWING ON A SEPARATE FORM FOR EACH CONTAINER

IV Description

A. <input checked="" type="checkbox"/> Tank <input type="checkbox"/> Sump <input type="checkbox"/> Lagoon, Pit or Pond <input type="checkbox"/> Other	Container Number (if there is no number assign one): 006
B. Manufacturer (if appropriate): <u>WIK</u> Year of Mfg: <u>UNK</u>	C. Year Installed: <input type="checkbox"/> Unknown
D. Container Capacity: <u>1000</u> gallons <input type="checkbox"/> Unknown	E. Container Repairs: <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> Yes Year: _____
F. Is Container currently used? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, year of last use: _____ <input type="checkbox"/> Unknown	
G. Does the Container Store (Check One): <input type="checkbox"/> Waste <input checked="" type="checkbox"/> Product	
H. Does the Container Store Motor Vehicle Fuel or Waste Oil? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Check appropriate box(es): <input type="checkbox"/> Unleaded <input type="checkbox"/> Regular <input checked="" type="checkbox"/> Premium <input type="checkbox"/> Diesel <input type="checkbox"/> Waste Oil <input type="checkbox"/> Other (List) _____	

V Container Construction

A. Thickness of Primary Containment: _____ <input type="checkbox"/> Gauge <input type="checkbox"/> Inches <input type="checkbox"/> cm <input checked="" type="checkbox"/> Unknown
B. <input type="checkbox"/> Vaulted (Located in an underground Vault.) <input type="checkbox"/> Non-vaulted <input checked="" type="checkbox"/> Unknown
C. <input type="checkbox"/> Double Walled <input type="checkbox"/> Single Walled <input type="checkbox"/> Lined <input type="checkbox"/> Wrapped <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> None
D. <input type="checkbox"/> Carbon Steel <input type="checkbox"/> Stainless Steel <input type="checkbox"/> Fiberglass <input type="checkbox"/> Polyvinyl Chloride <input type="checkbox"/> Concrete <input type="checkbox"/> Aluminum <input type="checkbox"/> Steel Cld <input type="checkbox"/> Bronze <input type="checkbox"/> Composite <input type="checkbox"/> Non-metallic <input type="checkbox"/> Earthen Walls <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> Other _____
E. <input type="checkbox"/> Rubber Lined <input type="checkbox"/> Alkyd Lining <input type="checkbox"/> Epoxy Lining <input type="checkbox"/> Phenolic Lining <input type="checkbox"/> Glass Lining <input type="checkbox"/> Clay Lining <input type="checkbox"/> Unlined <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> Other _____
F. <input type="checkbox"/> Polyethylene Wrap <input type="checkbox"/> Vinyl Wrapping <input type="checkbox"/> Cathodic Protection <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> None <input type="checkbox"/> Other _____

STATE WATER RESOURCES CONTROL BOARD
HAZARDOUS SUBSTANCE STORAGE CONTAINER INFORMATION FOR ALAMEDA COUNTY

06/01/88

(1-FARM MOTOR VEHICLE FUEL TANKS, 2-ALL OTHER PRODUCT TANKS, 3-GASTE TANKS, 4-TUMPS, 5-PITS, PONDS, LAGOONS & OTHERS)

I OWNER

DOUGLAS PARKING CO.
1721 WEBSTER ST.

OAKLAND

CA 94612

II FACILITY

HARRISON ST. GARAGE
1432 HARRISON ST.
OAKLAND

CA 94612

MAILING ADDRESS
TOWNSHIP/RANGE/SECTION
1721 WEBSTER ST.
OAKLAND

CA 94612

DEALER/FOREMAN/SUPERVISOR
TELEPHONE
MAXIMO VARGUEZ
(415) 452-2440

TYPE OF BUSINESS
NO. OF CONTAINERS
GASOLINE STATION
2

CROSS STREET :
14TH ST.

III 24-HR. CONTACT PERSON / TELEPHONE
DAY: VARGUEZ, MAX

(415) 452-2440

NIGHT: VARGUEZ, MAX

(415) 522-4428

OWNER ASSIGNED CONTAINER NUMBER: 005

STATE BOARD ASSIGNED CONTAINER ID NUMBER: 0000012212001

IV DESCRIPTION

A. CONTAINER TYPE : TANK
B. MANUFACTURER/YR OF MFG: LDK
C. YEAR INSTALLED : 1981
D. CAPACITY (GALLONS) : 1,000

E. REPAIRS : NONE IF YES WHEN :
F. CURRENTLY USED : YES IF NO, YEAR OF LAST USE:
G. STORES : PRODUCT
H. MOTOR VEHICLE FUEL/WASTE OIL : YES CONTAINS: UNLEADED

IS CONTAINER LOCATED ON A FARM : NO

V CONTAINER CONSTRUCTION

A. THICKNESS :
B. VULTYING: UNKNOWN
C. MILLING: UNKNOWN
D. MATERIAL : UNKNOWN
E. LINING : UNKNOWN
F. JOINTING : UNKNOWN

VI PIPING

A. ABOVEGROUND PIPING :
C. REPAIRS : NONE IF YES, YEAR OF MOST RECENT REPAIR:
B. UNDERGROUND PIPING : UNKNOWN

VII LEAK DETECTION
STACK INDICATOR

VIII CHEMICAL COMPOSITION OF SUBSTANCE CURRENTLY STORED IN CONTAINER
UNLEADED MOTOR VEHICLE FUEL

HAZARDOUS SUBSTANCE STORAGE CONTAINER INFORMATION FOR ALAMEDA COUNTY
STATE WATER RESOURCES CONTROL BOARD
CONTAINER TYPES: 1-2-3-4-5

06/01/86

(1-FARM MOTOR VEHICLE FUEL TANKS, 2-ALL OTHER PRODUCT TANKS, 3-SOLITE TANKS, 4-PIPS, 5-PITS, PONDS, LAGOONS & OTHERS)

***** OWNER ASSIGNED CONTAINER NUMBER: 004 *****

***** STATE BOARD ASSIGNED CONTAINER ID NUMBER: 00000012212002 *****

IV DESCRIPTION

A. CONTAINER TYPE : TANK
B. MANUFACTURER/YR OF MFG: UNK
C. YEAR INSTALLED : UNK
D. CAPACITY (GALLONS) : 1,000

E. REPAIRS : UNKN IF YES WHEN :
F. CURRENTLY USED : YES IF NO, YEAR OF LAST USE:
G. STORES : PRODUCT
H. MOTOR VEHICLE FUEL/WASTE OIL : YES CONTAINS: PREMIUM

IS CONTAINER LOCATED ON A FARM : NO

V CONTAINER CONSTRUCTION

A. THICKNESS :
B. MATERIAL : UNKNOWN B. VAULTING: UNKNOWN C. WALLING: UNKNOWN
C. YEAR : UNKNOWN
E. LINING : UNKNOWN
F. WRAPPING : UNKNOWN

VI PIPING

A. ABOVEGROUND PIPING :
C. REPAIRS : UNKN IF YES, YEAR OF MOST RECENT REPAIR:
B. UNDERGROUND PIPING : UNKNOWN

VII LEAK DETECTION STOCK INVENTORY

VIII CHEMICAL COMPOSITION OF SUBSTANCES CURRENTLY STORED IN CONTAINER
12013
PREMIUM MOTOR VEHICLE FUEL

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. Bacharach

AHB:bv
Encl:

1 RICHARD T. WHITE
MICHAEL P. WALSH
2 TIMOTHY W. MOPPIN
FITZGERALD, ABBOTT & BEARDSLEY
3 1221 Broadway, 21st Floor
Oakland, California 94612-1837
4 Telephone: (415) 451-3300

5 GREGORY MELKI MATTEOSIAN
ATTORNEY AT LAW

6 ~~2636 Harrison Street, No. 202~~ -----
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 ALVIN H. BACHARACH and)
BARBARA JEAN BORSUK,)

13 Plaintiffs,)

14 v.)

15 STEVEN DAVIS, LEONARD DAVIS,)
16 ROBERT L. DAVIS, and Does 1 to 25,)
inclusive,)

17 Defendants.)

18 _____)
19 AND RELATED CROSS-ACTION)
20 _____)

Case No. 670066-3
No. 666290-3

DECLARATION OF STEVEN DAVIS
IN SUPPORT OF MOTION FOR
ORDER COMPELLING ANSWERS TO
QUESTIONS AT DEPOSITION

Hearing Date: 1/11/91
Time: 9:30 a.m.
Department: 19

21 I, Steven M. Davis, declare as follows:

22 1. I am one of the three lessees of the garage located at
23 1428-1432 Harrison Street/Alice Street, Oakland ("the garage") and
24 an individually named defendant herein. The facts stated herein
25 are of my personal knowledge and, if called as a witness to testify
26 in this matter, I could and would testify competently thereto.

27 2. On March 5, 1987, I made an offer to Mr. Alvin H.
28 Bacharach ("Bacharach") to purchase the garage. Bacharach refused

1 12. In the initial draft of the lease, Bacharach and Mark
2 Borsuk included a provision making me responsible for any soil
3 contamination clean-up. I refused to sign this draft of the lease.
4 I asked Bacharach why this clause was inserted if the tanks had not
5 leaked and were not leaking and the soil was not contaminated. He
6 responded that they had not leaked and were not now leaking and
7 that the soil was not contaminated, but that nobody could predict
8 what might occur prospectively over the next fifteen years. Since
9 the lease was to be for fifteen years and since it was to contain
10 a right of first refusal to purchase, Bacharach felt that I should
11 share in some of the responsibility for prospective risk.

12 13. I also questioned the "as is" clause of the lease in
13 conjunction with the repair and maintenance provisions, and in fact
14 suggested revisions to it. Buchman explained that I was misreading
15 the lease and that my concerns were unwarranted. He said that I
16 was obviously not responsible for rehabilitating or rebuilding the
17 garage. He said that this was a standard clause for a triple net
18 lease. I was just responsible for repairing and maintaining normal
19 wear and tear.

✓20 14. On April 24, 1990, I met with Lee Douglas at his garage
21 located on Webster Street. Lee Douglas was the tenant of the
22 garage immediately prior to my tenancy. I took notes of our
23 meeting. After the meeting, Lee Douglas initialed my notes.
24 Mr. Douglas stated that the underground storage tanks were there
25 prior to the inception of his lease in 1974. He stated that he
26 never performed any maintenance on the underground storage tanks.
27 Mr. Douglas said that several months prior to the expiration of his
28 lease, he had lunch at Ripoli's restaurant with Bacharach and Mark

SCS ENGINEERS

October 12, 1990
File No. 0390044.00

Mr. Paul H. Smith
Hazardous Materials Specialist
Alameda County Health Care Services Agency
Department Environmental Health
80 Swan Way, Room 200
Oakland, California 94621

Reference: Harrison Street Garage
1432 Harrison Street
Oakland, California 94612

Dear Mr. Smith:

I am in receipt of your letter of September 24, 1990, to Mr. Bacharach and Ms. Borsuk, and was requested by them to arrange for the removal of any liquid currently in the underground storage tanks (UST) at the front of the property at 1432 Harrison Street, Oakland, California.

On October 3, 1990, SCS Engineers employed personnel to take a vacuum truck and remove whatever material remained in the two tanks (underground storage tanks) at the above noted facility. The present tenant refused to allow the removal of the material and rather than cause an altercation SCS personnel left the scene.

SCS Engineers plans to have the liquid removed, and the tanks removed as soon as a Court Order allows our client, the owner of the property, to go on the property for the removal of the tanks and the possible liquid in the tanks. This situation has become somewhat exacerbated by the fact that there is a law suit between the tenants and the owner. However, as you mentioned, it is possible that the liquid in the tanks could cause problems, and SCS would like to get into the site as soon as possible.

SCS is also aware 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 parties shall take corrective action in response to an unauthorized release and compliance with the section." While SCS is not sure that there has been an unauthorized release, SCS

Mr. Paul H. Smith

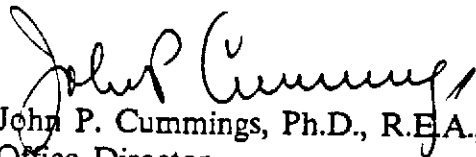
October 12, 1990

Page Two

Engineers wishes to act as rapidly as possible, but does not want to get into an altercation with the present tenants. SCS is requesting that you keep this letter on file so that you are aware of what has happened.

Should you have any questions, please contact me at (415) 829-0661.

Sincerely,



John P. Cummings, Ph.D., R.E.A., R.E.P.
Office Director
SCS Engineers

JPC/egh

SCS ENGINEERS

November 14, 1990
File No. 0390044.00

Robert A. Buchman, Esq.
King, Shapiro, Mittelman & Buchman
3650 Mount Diablo Boulevard, Suite 130
Lafayette, California 94549

Reference: Harrison Street Garage, Waste Oil and Gasoline Product Removal

Dear Mr. Buchman:

On October 27, 1990, SCS Engineers (SCS) represented by John P. Cummings met with Mark Borsuk and Barbara Borsuk, as well as Jim Hoblitzell and Brian Manning of Falcon Energy. Falcon Energy was to remove the waste oil and gasoline product in the four known underground tanks at the site identified as 1432 Harrison Street in Oakland, California, aka Harrison Street Garage.

The work commenced approximately 10:00 O'clock when the garage was opened by Mr. Davis' representative. The work progressed in the following manner. A grate on the Powell Street side was removed and a vacuum hose placed thru the grate opening to the waste oil tanks in the basement of the Harrison Street Garage on the Alice Street side. Upon removing the metal plate covering the waste oil tanks, it was noted that the pipes into the tank were smaller than the normal size utilized in waste oil tanks. A 1-inch by 10-foot probe had to be obtained to remove the product from the tanks. This was obtained from a local hardware facility. Figure 1 shows the location of the tanks and identifies the tanks. Waste Oil tank No. 1 had 29-inches of product in it, and Waste Oil No. 2 had 40-inches of product in it, prior to vacuum removal.

Samples were taken from each of the waste oil tanks, using clean plastic bailers. A sample from each tank was poured into two 1-liter amber jars. The samples were placed in a cooler with ice and shipped to a state-certified laboratory under the Chain-of-Custody documentation (see Appendix 1). The results from the analysis for cadmium, chromium, lead and zinc, PCB and halogenated chlorides are shown in Table 1.

Dedicated bailers were used in this sampling event to minimize possibilities of cross contamination possible with re-used equipment. During removal of the waste oil from the waste oil tanks, samples were analyzed for chloride contamination in used oil, using a Clor-D-Tect Q 4,000, oil titration qualitative test kit. The samples from Waste

Mr. Robert A. Buchman, Esq.
November 14, 1990
Page Two

Oil tank No. 1, showed chloride contamination in the used oil of less than 800 parts per million. The analysis for waste oil tank No. 2, showed less than 600 parts per million chloride contamination in the waste oil.

1300-gallons of waste oil were removed from Waste Oil tanks 1 and 2 combined. There remained some sludge in the bottom of both Waste Oil tank 1 and Waste Oil tank 2 which will be removed upon excavation of the waste oil underground storage tanks.

After completing the removal of the liquid waste oil, the vacuum truck moved around to the front of the facility and removed gasoline product from gasoline tank No. 1 and gasoline tank No. 2. Prior to removal of the product, tank 1 was measured and there was 7-inches of product in it. Tank No. 2 was also measured and 5-inches of product was in tank No. 2. Product in gasoline tank No. 1, indicated a presence of rust, the gasoline product removed from gasoline tank 2, was clear and appeared to be clean, non-contaminated gasoline.

The samples were taken from each of the underground storage tanks for gasoline with a clean bailer, and the material was placed in a cooler with ice and shipped to a state-certified laboratory using a Chain-of-Custody form. The oil samples taken during the October 27th sampling event were analyzed for PCBs EPA Protocol 8080; for halogenated hydrocarbons, EPA Protocol 8010; and for cadmium, chromium, lead and zinc EPA Protocol 6010. The gasoline samples were tested for iron content, organic lead and water content.

The results of the analysis for waste oil and gasoline are shown in Table 1 and Table 2 respectively. Copies of laboratory reports are attached in Appendix 1, along with the copy of Chain-of-Custody document.

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Table 1 contains the results of the chemical analysis for waste oil, contamination in the waste oil tanks located on the subject site during the October 27, 1990 sampling event. Neither waste oil tank shows cadmium contamination. The results of other metal contamination showed that chromium was minor, lead and zinc were more substantial but not excessive.

Mr. Robert A. Buchman, Esq.
November 14, 1990
Page Three

PCB 1242 was found at 110 parts per million (ppm) in Waste Oil tank 1 and 93 ppm in Waste Oil tank 2. Di-bromo chloromethane, 1,2 dichloroethene, tetrachloroethene and trichloroethene were found at levels as shown in Table 1, however, they were less than 1,000 parts per million total, and therefore were acceptable to become a recycled product.

The gasoline showed minor contamination. Evergreen Environmental Services used both products as a recycled product. SCS judged that the material was recyclable from the beginning, and this was confirmed by both the transporter, Falcon Energy, and Evergreen Environmental Services who took the product, and have recycled it. A copy of the manifest which was signed by Ms. Barbara Borsuk, the transporter, and the facility operator, is enclosed as Appendix 2.


In summary, the waste oil recovered from the waste oil tanks at the Harrison Street Garage, along with the gasoline product which was recovered, has been accepted and utilized by recycling contractor.


RECOMMENDATIONS

SCS Engineers recommends that the tanks, all four, be removed as soon as possible. Sludge and any residual products will be removed at the time of the tank excavation.

SCS recommends that this site's tanks be removed as soon as possible. Permits for the waste oil tanks need to be obtained, all of this work should take place after a workplan is put together and on agreement with the owner.

Sincerely,


J. Don McClenagan
Project Geologist
SCS Engineers


John P. Cummings, Ph.D., R.E.A., R.E.P.
Office Director
SCS Engineers

JDM/JPC/egh
Enclosure

cc: Mark Borsuk

COPY



ALVIN H. BACHARACH, INC.

DANVILLE CENTER OFFICE PARK (415) 820-8468
383 DIABLO ROAD • SUITE 100
DANVILLE, CALIFORNIA 94526

July 19, 1988

Leland Douglas
Douglas Parking Company
1721 Webster Street
Oakland, California 94612

Dear Lee:

I was somewhat surprised with the accounting for the security deposit which was contained in your letter of June 13, 1988. After receiving the letter, I went over the cost of cleaning up the garage in great detail with Steve Davis. Using his sources and people, it cost him in excess of \$10,000 to clean up the garage, remove the debris, remove the tires and to remove excess grease from the floors. I personally had to pay \$6,300 of that sum just to get the garage into the minimum condition for his lease to commence. In reality, he also lost a couple of weeks doing the clean-up, due to the fact that you did not leave the Premises in the condition required by your Lease. The garage still needs more work to be in good and tenantable condition.

I suggest the following as a solution:

Basic clean-up cost	\$6,300.00
April 8, 1988 property tax	\$1,043.79
March 1, 1988 business tax	\$ 225.61
	<u>\$7,568.40</u>
Less, security deposit	\$5,300.00
Balance due us	<u>\$2,268.40</u>

If you want to see the back-up documents for the \$6,300, I will be happy to furnish the same to you. I would appreciate your check as soon as possible.

I also want to point out to you your ongoing responsibility of future toxic waste clean-up relating to the gasoline storage tanks which are no longer in use. Since you informed me that you pumped insufficient gallonage to have to conform to code

Page
July 19, 1988

requirements, I have not reported the cessation of the use of the tanks to any governmental agency. However, if something comes up in the future, I would expect you to share your proper portion of the problem.

Lee, let's get this accounting behind us. I am sure we both have more important things to do.

Regards.

Yours very truly,

Alvin H. Bacharach



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

April 18, 1990

David Douglas
1721 Webster St.
Oakland, CA 94612

Re: 1833 Harrison St., Oakland

*Original to
Prentiss
4/24/90*

SECOND NOTICE OF VIOLATION

Dear owner/operator:

Our records indicate that there are underground tank(s) at your site at the above facility. You were notified of this situation months ago and have not taken the appropriate action as described below.

In accordance with the California Code of Regulations, 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.

You are directed to notify this Department within 10 days of your intentions and to obtain the necessary instructions and forms.

Please note that section 25299 of the California Health and Safety Code states that any operator or owner of an underground storage tank is liable for a civil penalty of not less than five hundred dollars or more than five thousand dollars per day for failure to obtain a permit, or failing to properly close an underground storage tank, as required by section 25298.

If you have any questions concerning this matter, please contact this office at 271-4320.

Sincerely,

Thomas F. Peacock, Senior HHS
Hazardous Materials Division

TFP:tfp

cc: Gil Jensen, Alameda County District Attorney, Consumer and
Environmental Protection Agency
Lester Feldman, RWQCB

HELLER, EHRMAN, WHITE & McAULIFFE
ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0638
TELEPHONE (415) 326-7600

333 BUSH STREET - SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW - TELEX 184-996 - FACSIMILE (415) 772-8288
TELEPHONE (415) 772-6000

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
FACSIMILE (206) 447-0849
TELEPHONE (206) 447-0900

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2306
FACSIMILE (213) 614-1868
TELEPHONE (213) 689-0200

1300 S W FIFTH AVENUE
PORTLAND, OREGON 97201-5696
FACSIMILE (503) 241-0960
TELEPHONE (503) 227-7400

November 27, 1990

JONATHAN SEBASTIAN LEO
DIRECT DIAL (415) 772-6066

550 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501-1571
FACSIMILE (907) 277-1920
TELEPHONE (907) 277-9000

BY HAND DELIVERY

Mr. Paul M. Smith
Hazardous Materials Specialist
Alameda County Health Care
Services Agency
80 Swan Way, Room 200
Oakland, CA 94621

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

Dear Mr. Smith:

Your letter order of July 31, 1990, and subsequent letters of August 27 and September 24, name my clients, Alvin Bacharach and Barbara Borsuk, as the parties responsible for the clean-up in the above referenced matter. The order is grossly unjust in this regard. At no time did my clients ever own, operate or in any way control these underground petroleum tanks. They were owned and operated exclusively by Douglas Motor Services/Parking Company ("Douglas"), which leased my clients' property for use as an auto repair shop and parking garage for sixteen years. Douglas, and not my clients, is the party responsible for the contamination and as such is the party that should be named in the County's clean-up order. The County has the legal authority to take action against the actual polluter and equity requires that it do so in this case.

There is no question that Douglas was both the owner and operator of the two underground storage tanks at issue. It bought, installed and owned the tanks, and was responsible for their daily operation. See Health & Safety Code §§25299.19, 25299.20 (defining the terms "operator" and "owner"). Douglas registered itself as the "owner" of the tanks on permits issued by the City of Oakland in both 1975 and 1982 which authorized the installation of the two

tanks. See Attachment 1. In addition, a permit to operate was issued to Douglas in November, 1987 by Alameda County. See Attachment 2. Moreover, Douglas identified itself as the "owner" of these tanks on several State Water Resources Control Board Hazardous Substance Storage Statements. See Attachment 3. The tanks were not used for any purpose once Douglas vacated the premises at the expiration of the lease in March 1988.

Not only did Douglas own, install and operate the tanks; it knew that they leaked. As long ago as 1982, Douglas was put on notice that there were "many leaks in [the] tank and product line." See Attachment 4. Moreover, it is our understanding that Steve Davis (who succeeded Douglas as the tenant of the Harrison Street Garage) testified in a deposition that Douglas had informed him that Douglas had known in 1988 that the tanks were leaking. By contrast, my clients never owned the tanks or had any control over them. Indeed, Douglas did not even inform my clients of its intent to install and operate these tanks. My clients were simply presented with a fait accompli once the tanks were in place. In a 1975 letter to Douglas, Mr. Bacharach declined to pay any of the costs incurred by Douglas relative to the installation of the first tank. See Attachment 5.

State agencies will remove a party named in an abatement order if there is no substantial evidence that the party was responsible for the contamination. See In Re Exxon Order No. 85-7 (1985). In that case the State Water Resources Control Board granted Exxon's petition to be removed from an abatement order regarding a leaking underground petroleum tank in the absence of substantial evidence that Exxon owned the tanks or was responsible for their operation. There is no reason why the County should not follow that precedent here with regard to my clients in light of the overwhelming evidence that they never had anything to do with the tanks at issue. All of the equities in this case weigh heavily against charging Mr. Bacharach and Ms. Borsuk with any of the liability for cleaning up the site, since it is beyond dispute that the contamination was due entirely to the actions of Douglas.

Douglas is the responsible party not only under all precepts of basic fairness, but pursuant to state law as well. The California Underground Storage Tank Act, Health & Safety Code § 25280 et seq., authorizes the County to require all responsible parties to incur cleanup and remediation costs associated with underground storage tanks, not just present landowners. Section 25299.37 provides that:

Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release * * *.

Mr. Paul M. Smith
November 27, 1990

Page 3

This broad language is inclusive enough to encompass owners and operators of underground tanks even if they leased the premises.

The statute does not limit the scope of liability to owners or operators but includes also "other responsible parties." Surely a prior tenant which installed, owned and operated the tanks for well over a decade falls within this category. In a similar case involving a prior lessee's responsibility for petroleum contamination the State Water Resources Control Board found:

[Lessee's] lack of present control is not relevant. Responsibility for a problem created in the past is.

In Re Stuart Petroleum, Order No. WQ 86-15 at 8-9 (1986).

As the owner, operator and party responsible for the tanks, Douglas was required to close the tanks pursuant to Health & Safety Code §25298(c). Moreover, §25298(a) prohibits abandonment of underground tanks. Douglas blatantly violated these express code sections by failing to remove the tanks and clean up the site when its lease ended in 1988. In addition, Water Code §13272, provides that "persons," which would include Douglas, must notify the state regarding any discharge to water of oil or petroleum. At no time did Douglas comply with this mandate although it knew about the gas leakage since 1982, the year §13272 was enacted. These code violations further argue in favor of naming Douglas as the party responsible under the County's current clean-up order.

Douglas is also responsible for site assessment and closure under federal law. The state statute, Health & Safety Code §25299.37(e), provides that the federal Underground Storage Tank Act, 42 U.S.C. § 6991 et seq., is applicable to corrective actions which must be taken by responsible parties. Under the federal regulations, 40 CFR §280.73, owners and operators of USTs which are permanently closed before December 1988 -- and this system was permanently abandoned as of March 1988:

must assess the excavation zone and close the UST system in accordance with this subpart if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

Thus, under federal law, which is applicable here by way of Health and Safety Code Section 25299.37(e), Douglas is directly responsible for evaluation and closure of the site.

Mr. Paul M. Smith
November 27, 1990

Page 4

Finally, Douglas is responsible for removal and cleanup of the tanks pursuant to the lease agreement with my clients in several respects. First, the lease contains an express statement that:

Lessee agrees to keep, save, and hold Lessor free from all liability, penalties . . . from any causes whatsoever, including leakage . . .

See January 30, 1981 Lease ¶9, Attachment 6. Thus the parties specifically agreed that Douglas, and not the landlord, would bear the responsibility of damages and costs associated with leakage from the tanks.

Second, the lease provides that the lessee agrees to: 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 all lawful requirements or orders of any . . . [government] in anyway relating to the condition, use or occupancy of the . . . premises throughout the entire term of this lease and to the perfect exoneration from liability of the lessor.

Lease ¶ 3. Thus, the parties contemplated that any statutory or regulatory violation occurring during the term of the lease was to be Douglas' sole responsibility.

Third, the lease establishes that the landlord had the express right to request that Douglas remove any fixtures installed by Douglas. See Lease ¶ 5. At least one court has held that a UST is a removable fixture which does not become a part of the realty. See Murr v. Cohn (1927), 87 Cal. App. 478. The critical issue, the court stated, was the intent of the parties. In this case, Mr. Bacharach specifically informed Douglas in 1988 (the year the lease expired) that it was responsible for the remediation of any contamination caused by leakage from the tanks.

In sum, it is our position that Douglas, and not the landowners, is the party entirely responsible for the contamination of the Harrison Street property under both applicable law and the lease agreement. The equities here argue overwhelmingly in favor of substituting Douglas for my clients in the County's cleanup order.

I would also like to take this opportunity to address the issues raised in your letter of September 24. In that letter you instructed my clients to remove the liquid remaining in the tanks

Mr. Paul M. Smith
November 27, 1990

Page 5

prior to their removal. You requested a response to this, and the other concerns raised, within fourteen days. On October 12 SCS Engineers, my clients' consultant, wrote to you in response and informed you that it had attempted to remove the remaining liquid from the tanks on October 3 but was denied access by Steve Davis, the tenant on the premises at that time. Access to the site was eventually provided and all of the product was removed from both the waste oil and the gasoline tanks on October 27. See Uniform Hazardous Waste Manifest, Attachment 7. We would like to discuss this activity with you when we meet.

Your September 24 letter also refers to the need for a preliminary site assessment to assist in the determination of the amount and extent of site contamination and suggested that tank excavation and soil stockpiling may present human health hazards. We want to discuss these concerns with you, as well as the timing of tank removal and the other issues raised previously in this letter, as soon as possible.

We believe that a meeting with you, the Alameda County District Attorney and us (including our consultant) is far preferable to telephone communication and is also more likely to result in a quicker resolution of the issues. To that end, we request such a meeting on Friday, November 30 (when our consultant, Dr. John Cummings of SCS, will be available).

Please call me as soon as you have had the chance to review this letter and discuss it with the District Attorney, so that we can schedule the meeting. Thank you very much for your cooperation in this matter.

Sincerely,


Jonathan S. Leo

Attachments

cc: Mr. Alvin Bacharach
Mr. Mark Borsuk
Gil Jensen (Alameda County D.A.)

HELLER, EHRMAN, WHITE & McCAULIFFE
ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

528 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0638
TELEPHONE (415) 326-7800

333 BUSH STREET - SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW - TELEX 184-996 - FACSIMILE (415) 772-6268
TELEPHONE (415) 772-6000

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7099
FACSIMILE 206/447-0849
TELEPHONE (206) 447-0900

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2306
FACSIMILE (213) 614-1888
TELEPHONE (213) 689-0200

December 13, 1990

300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-5898
FACSIMILE 503/241-0950
TELEPHONE 503/227-1400

JONATHAN SEBASTIAN LEO
DIRECT DIAL (415) 772-6066

550 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501-1371
FACSIMILE 907/277-9200
TELEPHONE (907) 277-9000

17409-0001

BY TELECOPY

Mark Thomson, Esq.
Deputy District Attorney
Office of the Alameda County District Attorney
7677 Oakport Street, Suite 400
Oakland, California 94621

Harrison Street Garage
Underground Storage Tank Removal and Clean-Up

Dear Mr. Thomson:

This letter is intended to supplement our telephone conversation of Tuesday, December 11, 1990. We discussed the order that the Alameda County Health Care Services Agency issued on July 31, 1990 to my client, Alvin Bacharach (the owner and landlord of the above-referenced property). This order directed him to investigate and, as appropriate, remediate petroleum hydrocarbon contamination from the underground gasoline storage tanks which were installed, owned and operated by a former long-time tenant Douglas Motor Services ("Douglas"). We also discussed the substitution of Douglas for my client on the order. You asked me the following five questions:

1. When did my client first learn about the tank leaks?
2. How did we obtain the 1982 receipt noting the leaking tanks?
3. Did my client receive any share of Douglas' profits from the sale of gasoline in the form of rent?
4. When were the original 550-gallon underground tanks installed?

Mark Thomson, Esq.
December 13, 1990

Page 2

5. Could we provide you with copies of the earlier leases?

I will respond to each of these questions in turn.

In response to the first and second questions, my client first learned about the leaking tanks in January or February of 1983 when Douglas forwarded the bill from the Robert J. Miller Company seeking reimbursement for those costs from my client. See Attachment 4 to my November 27 letter to Paul Smith. Thus, we obtained the document directly from Douglas. It was my client's clear understanding that Douglas, as the owner and operator of the underground tanks, would take all necessary steps to remedy any problems associated with tank leakage identified by its consultant. Douglas was in the business of selling gasoline, and had expertise in this area. Moreover, my client had no reason to believe that Douglas would not honor the terms of the lease which required Douglas to comply with all laws (see leases paragraph 3) including then-applicable laws requiring the reporting of discharges or releases of petroleum to soil and groundwater. Mr. Bacharach was entirely unaware that Douglas' contractor had simply removed the tank without addressing or remedying the contamination caused by the tank leakage.

Turning to the third question, my client did not receive any share of Douglas' profits from the sale of gasoline. In fact, the rent which Douglas paid to my client was exclusive of such sales. For this reason, Mr. Bacharach declined to pay for the installation of the underground storage tank in 1975. See Attachment 5 to my November 27 letter to Paul Smith. He did contribute approximately 21% of the cost of installing the second underground storage tank in 1982 as a gesture in response to the tenant's increased rent payments from the parking revenue.

In response to your fourth question, unfortunately my client has no documentation regarding the installation of the original 550-gallon tanks on the Harrison Street property. We have checked with the Fire Department, but their files do not contain this information. We will be happy to cooperate with you in any way we can to ascertain this information.

Finally, the leases for the Harrison Street property between my client and Douglas from 1972 through 1988 are enclosed as per your request.

For your further information, Douglas took no action on one of the tanks for at period of a least seven months in 1982 after it had been informed of a release. It was informed on April 19, 1982 by the Robert J. Miller Company ("RJM") that one of the

Mark Thomson, Esq.
December 13, 1990

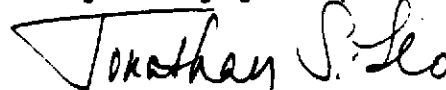
Page 3

underground storage tanks was leaking. On May 4, RJM submitted a bid to pull out and replace the tank. Nevertheless, Douglas took no action until October, when it requested a revised estimate. The tank was not removed until November, 1982.

As an additional matter, we have noticed that Paul Smith, the County Hazardous Materials Specialist handling this matter, has been sending copies of all correspondence with my clients to Jonathan Redding, counsel for Steve Davis, former tenant of the Harrison Street property. Davis relinquished possession of the property on November 6 and has no further interest in the property or the tank removal and clean-up. When I first brought this issue to Mr. Smith's attention last month, he said that he wanted you to respond to this request. Therefore, I would appreciate your instructing Mr. Smith that it is no longer appropriate to forward correspondence in this matter to Mr. Redding since his role in this matter has terminated.

Please let me know if there is any further information that we can provide which would be helpful to you in any way. I look forward to working with you toward a speedy and equitable resolution of this matter, and to meeting with you and Mr. Smith at your earliest convenience to discuss the status of my client (and that of Douglas) on the County's order.

Very truly yours,



Jonathan S. Leo

Enclosures

cc: (all without enclosures)
Mark Borsuk, Esq.
Mr. Alvin Bacharach
Mr. Paul Smith

HELLER, EHRMAN, WHITE & MCAULIFFE
ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
FACSIMILE (415) 324-0638
TELEPHONE (415) 326-7600

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW · TELEX 184-996 · FACSIMILE (415) 772-6268
TELEPHONE (415) 772-6000

701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
FACSIMILE (206) 447-0849
TELEPHONE (206) 447-0900

801 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-5758
FACSIMILE (213) 614-1868
TELEPHONE (213) 689-0200

February 6, 1991

1201 PACIFIC AVENUE
TACOMA, WASHINGTON 98402-4308
FACSIMILE (206) 572-8743
TELEPHONE (206) 572-6666

1300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-5898
FACSIMILE (503) 241-0950
TELEPHONE (503) 227-7400

550 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501-3571
FACSIMILE (907) 277-1920
TELEPHONE (907) 277-1900

JONATHAN SEBASTIAN LEO
DIRECT DIAL (415) 772-6068

17409-0001

Mark Thomson, Esq.
Deputy District Attorney
Office of the Alameda County District Attorney
7677 Oakport Street, Suite 400
Oakland, California 94621

Harrison Street Garage: Appeal of
County Decision to State Water Resources Control Board

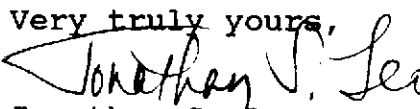
Dear Mr. Thomson:

This letter serves as formal notice that Alvin Bacharach and Barbara Borsuk (collectively, "Petitioner") have decided to appeal the County of Alameda's ("County") final decision not to add Douglas Motor Services to the corrective action order issued against them by the County with regard to the Harrison Street Garage. A copy of the Petition and related documents filed with the State Board is enclosed pursuant to 23 C.C.R. §2050(a)(9).

Petitioner hereby requests pursuant to 23 C.C.R. §2050(a)(8), that the County provide the State Board with a list of all persons other than those listed in Section 8 of the Petition, if any, known by the County to have an interest in the subject matter of the Petition, which is the addition of Douglas Motor Services as a responsible party on the aforementioned Cleanup Order.

Petitioner also hereby requests 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 very much for your cooperation in this matter.

Very truly yours,

Jonathan S. Leo

Enclosure
cc: Paul Smith

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



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

January 25, 1991

Certified Mailer # P 062 127 954

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

Re: **Oakland Parking Garage, 1432 Harrison Street
including connecting Alice Street garage, Oakland, CA 94612**

Dear Mr. Cummings:

This letter follows telephone conversations I shared on January 17, 1991, with Mr. Jonathan Leo, and yourself, outlining criteria required by this office for the preparation of a Site Characterization/ Assessment Proposal.

As you know, Subsurface Consultant's 10/19/90 report disclosed various areas of contamination and abandoned underground storage tanks at the above sites. In brief summary, the report indicates that abandoned underground storage tanks exist in the basement of the parking structure near Alice Street as well as under the sidewalk on Harrison street. An "anomalous" radar image also revealed a suspected former underground storage tank (ust) location next to the engine-hoist area. Laboratory results from seven soil borings indicated contamination levels of Total Petroleum Hydrocarbon as high as 9300 ppm, and benzene concentrations as high as 99,000 ppb. Lab analysis revealed contaminant sources of gasoline, diesel and PCBs.

Clearly, this preliminary data strongly suggests groundwater has been impacted and the probability that contamination has migrated off-site. More detail than that provided in the 10/19/90 report with regard to definition of the nature and extent of the problem is required.

It is my understanding that attorneys for the property owners and the District Attorney's office have agreed to the following time table:

Within 15 days of the date of this letter, you shall submit a proposal for site characterization/assessment for my review.

Within 5 days of my receipt of that proposal, I shall have completed my review and if the proposal is adequate, give my consent to commence site assessment. If the proposal is deficient, I shall apprise you of the deficiencies.

Within 45 days of my consent for you to commence site characterization/ assessment, you shall provide this office a report of the results of that site characterization/ assessment.

Mr. Cummings
January 25, 1991
Page 2 of 4

This Department will oversee the site assessment for the referenced facility. This oversight will include our review and comment on work proposals and technical guidance on appropriate investigative approaches. The issuance of well drilling permits, however, will be through the Alameda County Flood Control and Water Conservation District, Zone 7.

All reports and proposals must be submitted under seal of a California-Registered Geologist, Certified Engineering Geologist, or Registered Civil Engineer. Please include a statement of qualifications for each lead professional involved with this project.

Your proposal for site characterization/assessment shall be consistent with RWQCB Staff Recommendations for the Initial Evaluation and Investigation of Underground Tanks. The major elements of such an investigation are summarized in the attached Appendix A.

Essentially your proposal for site characterization/ assessment is a plan for investigative work which will identify and delimit areas of contamination. That investigative work will define the vertical and lateral impact upon groundwater and soils resulting from underground tanks and other contamination sources.

Your proposal for site characterization/ assessment shall also include:

- o A risk assessment addressing the human health issues likely to occur resulting from exposure of contaminants emanating from the above site, and any mitigative measures proposed in association with the preliminary investigative assessment work.
- o A subsurface assessment to determine the correct number of underground tanks or other sources of contamination at the Harrison/ Alice street sites.
- o A plan for evaluation for PCB contamination and halogenated substances in the down gradient direction of the waste oil tanks located near Alice street.

Upon implementation of the site characterization/ assessment proposal, and as earlier noted, you will be submitting a report of the site characterization/ assessment to this office. The site characterization/ assessment report shall include, but shall not be limited to, the following information:

Information gathered to develop a strategy for further delimiting and effectively remediating subsurface contamination at the site.

Mr. Cummings
January 25, 1991
Page 3 of 4

A discussion of the human health issues associated with the removal of the UST's, and during site remediation may need to be conducted.

A tank closure/ modification plan for the removal of any additional underground storage tanks (USTs). The current closure plan approved by this office is for 2 UST's.

With the re-submitted tank closure plan, a revised Health & Safety Plan to address all issues of concern of the project.

A time schedule for the completion of the various phases of work including site characterization, plan implementation, tank removal, monitoring well installation, and soil and groundwater remediation.

After the completion of the site characterization/ assessment report subsequent reports must be submitted quarterly until this site qualifies for final RWQCB "sign off". Such quarterly reports are due the first day of the third month of each subsequent quarter (i.e., March 1, June 1, September 1, and December 1). These reports should describe the status of the investigation and must include, among others, the following elements:

- o Details and results of all work performed during the designated period of time: records of field observations and data, boring and well construction logs, water level data, chain-of-custody forms, laboratory results for all samples collected and analyzed, tabulations of free product thicknesses and dissolved fractions, etc.
- o Status of ground water contamination characterization
- o Interpretation of results: water level contour maps showing gradients, free and dissolved product plume definition maps for each target component, geologic cross sections, etc.
- o Recommendations or plans for additional investigative work or remediation

Mr. Cummings
January 25, 1991
Page 4 Of 4

Should you have any questions about the content of this letter,
please call me at 415/271-4320.

Sincerely,

Paul M. Smith
Paul M. Smith
Hazardous Materials Specialist

cc:

Mark Borsuk, Attorney at Law
Jonathan Leo, Heller, Ehrman, White & McAuliffe
Mark Thomson, Alameda County District Attorney's office of
Consumer and Environmental Affairs
Rafat A. Shahid, Assistant Agency Director, Alameda County
Environmental Health Department
Lester Feldman, SFRWQCB
Charlene Williams, DHS

AL

- A. Placement and ratio for location of monitoring wells, including a map scale.
- B. Drilling method for construction of monitoring wells, including decontamination procedures.
 1. Expected depth and diameter of monitoring wells
 2. Date of expected drilling.
 3. Method and location of soil sampling of borings.
 4. Casing type, diameter, screen interval, and pack and slot sizing technique.
 5. Depth and type of seal.
 6. Construction diagram for wells.
 7. Development method and criteria for determination of adequacy of development.
 8. Plans for disposal of cuttings and development water.
 9. Surveying plans for wells (requirements include surveying to established benchmark to ± 0.01 foot)
- C. Groundwater sampling plans (include plans for sampling and on-site domestic wells)
 1. Water level measurement procedure
 2. Methods for free product measurement, observation of sheen and odor.
 3. Well purging procedures.
 4. Well purge water disposal plans.
 5. Sample collection procedures.
 6. Sample analyses to be used
 7. Quality assurance plan
 8. Chain of custody procedures

V. Include a site safety plan

A report will need to be submitted following collection of the information proposed and approved in the workplan. The report should set out the collected information in an orderly fashion and include any recommendations for additional needed work.

B. Describe sampling methods and procedures to be used.

1. If a soil gas survey is planned, then:

- a. Identify number of boreholes, location, sampling depth, etc.
- b. Identify subcontractors, if any
- c. Identify methods or techniques used for analysis
- d. Provide quality assurance plan for field testing

2. If soil borings are to be used to determine the extent of soil contamination, then:

- a. Identify number and location (mapped) of proposed borings.
- b. Describe depth of borings
- c. Describe soil classification system, soil sampling method and rationale
- d. Describe boring drilling method, including decontamination procedures.
- e. Describe boring abandonment method

C. Describe method and criteria for screening clean versus contaminated soil, including a complete description of procedures to be used for storing and disposal of any excavated soil. If on-site soil aeration is to be utilized, then a complete description of the treatment method is required:

1. Volume and rate of aeration/turning.
2. Method of containment and cover
3. Wet weather contingency plans.

Other on-site treatments (such as bioremediation) requires permits issued by the Regional Board. Off-site storage or treatment also requires permits issued by the Regional Board.

D. Security measures planned for excavated hole and contaminated soil (i.e., six foot fence around hole, ripped up piping, spoil piles, etc.)

IV. Plan for determining groundwater contamination.

Construction and placement of wells should adhere to the requirements of the "Regional Board Staff Recommendations for Initial Evaluation and Investigation of Underground Tanks". If the verified down gradient location has been established, then a complete description of the rationale must be provided.

Appendix A

Workplan for Initial Subsurface Investigation

There are a large number of initial site investigations related to unauthorized releases of fuel products. The number of workplans and reports to be reviewed and approved require that these documents have uniform organization and content. The purpose of this appendix is to present an outline to be followed by professional engineering or geologic consultants in preparing workplans to be submitted for approval to the Regional Board and local agencies.

A statement of qualifications and registration number for the California registered engineer and/or registered geologist responsible for the project will need to be included with the submitted workplan and reports.

This appendix should be referred to in context with the "Regional Board Staff Recommendations for Initial Evaluation and Investigation of Underground Tanks".

PROPOSAL FORMAT

I. Introduction

A. Statement of Scope of Work

B. Site location

C. Background

D. Site History

1. Brief description of the type of business and associated activities that take place at the site, including the number and capacity of operating tanks.
2. Description of previous businesses at the site.
3. Complete description of tank activities, tank contents, and tank removal.
 - a. Number of underground tanks, uses, etc. (include the volume of each tank, construction material, and tank condition)
 - b. Date of tank removal and condition of tank.
 - c. Description of all waste removal, including copies of all manifests.
 - d. Filing status and copy of unauthorized release form, if not previously submitted.
 - e. Previous tank testing results and date. Include discussion of inventory reconciliation methods and results for previous three years.

f. Estimate of the total quantity of product st.

4. Other spill, leak and accident history at the site, including any previously removed tanks.
5. Describe any previous subsurface work at the site or adjacent sites.

II. Site Description

- A. Vicinity description and hydrogeologic setting.
- B. Vicinity map (including wells located on-site or on adjoining lots, as well as any nearby streams).
- C. Site map to include:
 1. Adjacent streets.
 2. Site building locations.
 3. Tank locations.
 4. Island locations and piping to pumps from tanks.
 5. Any known subsurface conduits, underground utilities, etc.
- D. Existing soil contamination and excavation results.
 1. Provide sampling procedures used.
 2. Indicate depth to groundwater, if encountered.
 3. Describe soil strata encountered in excavation.
 4. Provide results in tabular form and location of all soil sampling (and water sampling, if appropriate). The date sampled, the identity of the sampler, and signed laboratory data sheets need to be included.
 5. Identify underground utilities
 6. Describe any unusual problems encountered.
 7. Completely describe methods for storing and disposal of all contaminated soil.
 8. Reference all required permits, including those issued by the Air Quality Management District and local underground tank permitting agency.

III. Plan for determining extent of soil contamination on site.

- A. Describe method/technique for determining extent of contamination within the excavation.

- A. Placement and rationale for location of wells including a map to be
- B. Drilling method for construction of monitoring wells, including decontamination procedures.
 1. Expected depth and diameter of monitoring wells
 2. Date of expected drilling.
 3. Method and location of soil sampling of borings.
 4. Casing type, diameter, screen interval, and pack and slot sizing technique.
 5. Depth and type of seal.
 6. Construction diagram for wells.
 7. Development method and criteria for determination of adequacy of development.
 8. Plans for disposal of cuttings and development water.
 9. Surveying plans for wells (requirements include surveying to established benchmark to 0.01 foot)
- C. Groundwater sampling plans (include plans for sampling and on-site domestic wells)
 1. Water level measurement procedure
 2. Methods for free product measurement, observation of sheen and odor.
 3. Well purging procedures.
 4. Well purge water disposal plans.
 5. Sample collection procedures.
 6. Sample analyses to be used
 7. Quality assurance plan
 8. Chain of custody procedures

V. Include a site safety plan

A report will need to be submitted following collection of the information proposed and approved in the workplan. The report should set out the collected information in an orderly fashion and include any recommendations for additional needed work.

PROOF OF SERVICE BY MAIL

I, JUAN INICO, declare as follows:

1. I am employed with the law firm of Heller, Ehrman, White & McAuliffe, whose address is 333 Bush Street, San Francisco, California 94104-2878.

2. I am familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen years and I am not a party to this action.

3. On February 6, 1991, I served the following:

Petition for Review of Failure
to Act by the County of Alameda
Health Care Services Agency

Declaration of Alvin Bacharach

Declaration of Jonathan S. Leo

Declaration of Mark Borsuk

on the below parties in this action by placing true and correct copies thereof in sealed envelopes, addressed as shown, for collection and mailing pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business:

Paul M. Smith
Hazardous Materials Specialist
Alameda County Health Care
Services Agency
80 Swan Way, Room 200
Oakland, CA 94621

Mark Thomson, Esq.
Deputy District Attorney
Office of the Alameda County
District Attorney
7677 Oakport Street, Suite 400
Oakland, California 94621

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

Executed at San Francisco, California, this 6th day of February, 1991.



JUAN INICO