

TIDELANDS LEASE

1. Lease. Encinal Industries, Inc., (the "Lessee"), hereby leases from the City of Alameda (the "Lessor"), and Lessor hereby leases to Lessee, on the terms and conditions hereinafter set forth, all of that certain real property located in the City of Alameda, County of Alameda, State of California, described in Exhibit "A", which is attached hereto and incorporated herein.

If, at any time during the term of this Lease, or its renewal as herein provided, the location of the U.S. Pierhead Line shall be changed, then the northerly boundary line of the property hereby leased shall be the U.S. Pierhead Line as hereafter so established.

2. Term. The term of this Lease shall be for twenty-five (25) years commencing on September 7, 1983, and ending on September 7, 2008.

In the event that (i) the real property described in Exhibit "A" continues to be leased to the Harbor Tug and Barge Company ("Harbor Tug") as of the date of this Lease, and (ii) Lessor has delivered the Assignment of Lessor's Interest in Lease required by Paragraph 7 of that certain Agreement to Exchange and Lease Real Property, dated as of July 20, 1983, then the commencement date for the term of this Lease shall be automatically postponed until the time that Harbor Tug vacates the real property, either voluntarily or involuntarily. In such event, the terms, covenants and conditions of this Lease, including, without limitation, the covenant to pay rent, shall not become effective until such time. However, the initial term of this Lease shall be reduced by the number of days that the real property is occupied by Harbor Tug, so that the expiration of the initial term shall still occur twenty-five (25) years from the date hereof.

Harbor Tug shall be deemed to vacate the real property as of the date that the right of possession indisputably reverts to Lessor or its assignee. If Lessor or its assignee must initiate a judicial or administrative procedure of any nature to establish such indisputable right of possession (including, without limitation, a procedure relating to unlawful detainer, abandonment, bankruptcy or insolvency), then Harbor Tug will be deemed to vacate the real property when a final judgment or order has been entered and all applicable appeal periods have expired.

3. Renewal. Lessee shall have an option to renew this Lease for a further term of twenty-five (25) years commencing immediately upon the expiration of the initial term set forth in Paragraph 2 above. Said option may be exercised by Lessee giving written notice of the exercise of its option at any time at least six (6) months prior to the expiration of the initial term.

4. Rental. During the first five (5) years of this Lease, Lessee shall pay rental in the amount of Three Thousand Five Hundred Fifty-Six Dollars (\$3,556.00) per year.

The annual rental provided for hereunder shall be paid in advance on the first day of the term of this Lease, as such term may be postponed pursuant to Paragraph 2 above, and on the same day of each calendar year thereafter during the term of this Lease and any renewal thereof.

The annual rental for each subsequent five (5) years of this Lease, and for the renewal term of this Lease, if Lessee exercises its option to renew, shall be \_\_\_\_\_ Dollars (\$ 3,556.00), multiplied by a fraction, the numerator of which is the value of Lessee's possessory interest in the property (as most recently finally assessed by the Assessor of Alameda County), and the denominator of which is the initial value of Lessee's possessory interest in the property (as finally assessed by the Assessor of Alameda County).

In the event that the Assessor of Alameda County discontinues assessing possessory interests in essentially the same manner as is provided for by law as of the date of commencement of this Lease, each party hereto promises to make a good faith effort to agree upon what the assessed possessory interest value would have been if the Assessor had not so discontinued assessing possessory interests.

If the parties do not agree upon what the assessed possessory interest value would have been if the Assessor had not so discontinued assessing possessory interests, for the purpose of computing rent under this Lease the possessory interest value shall be determined pursuant to the rules of the American Arbitration Association by a panel of three (3) arbitrators.

Each Party shall bear one-half (1/2) of the cost of such arbitration unless the arbitrators determine that one of the Parties hereto did not make a good faith effort to agree prior to arbitration, in which event each Party to this Lease shall bear such proportion of the cost of arbitration as the arbitrators, in their discretion, may agree.

5. Use of Premises. The premises may be used by Lessee, its successors and assignees, for the establishment, improvement and conduct of a harbor and/or a marina, for construction, maintenance and operation of wharves, docks, piers, berthing slips, quays and other utilities, warehouses, factories, storehouses, structures, tracks and appliances necessary or convenient for any such purposes and including general or industrial manufacturing incidental to such purposes and for any other lawful purpose, provided that no use of the premises will be made that is inconsistent with the provisions of California Statutes 1917, Chapter 594, as said statute may from time to time be amended.

Nothing herein contained shall be deemed or construed as a franchise to operate a public terminal or public utility on the premises.

6. Percentage Rent for Marina/Commercial Uses.

(a) Percentage of Gross Income. In the event that Lessee requests and receives, at any time during the initial term of this Lease or any extension hereof, all permits and approvals necessary to enable it to use the premises for a marina and/or for commercial purposes, then Lessee shall pay to Lessor the greater of: (i) the base rental set forth in Paragraph 4 above, as periodically adjusted, or (ii) five percent (5%) of all gross income generated on the premises by the marina and/or one percent (1%) of all gross income generated on the

premises by the commercial uses for as long as such marina and/or commercial uses continue in operation. This additional compensation shall be payable to Lessor within thirty (30) days after the end of each calendar quarter. Notwithstanding the foregoing, no additional consideration shall be payable to Lessor if Lessor uses its governmental permit and approval power over new developments to preclude or unreasonably restrict development of the premises for purposes other than a marina and/or commercial uses. Furthermore, as the owner and operator of the development on the premises, Lessee shall be entitled to discontinue the marina and/or commercial uses at any time, in its sole discretion.

(b) Definition of Commercial Uses. Whether a particular use constitutes a "commercial" use shall be determined in accordance with the Zoning Ordinances of the City of Alameda existing as of the date hereof. A particular use shall be classified as a "commercial" use only if it would most closely be categorized within the "C-1" or "C-2" zones. If a particular use would most closely be categorized with the "M-1," "M-2," "C-M," or "A-P" zones, then it shall not be classified as a "commercial" use. In the event that Lessor and Lessee cannot agree regarding whether a particular use constitutes a "commercial" use, then they shall submit the matter to arbitration pursuant to Paragraph 6 below.

(c) Definition of Gross Income. The "gross income" from a marina and/or from commercial uses is defined to be the gross selling price of all merchandise and services sold on the premises by Lessee, its sub-tenants, licensees and concessionaires, whether for cash or on credit and whether made by store personnel or by vending machines, excluding therefrom the following:

- (1) The selling price of all merchandise returned by customers and accepted for full credit;
- (2) The amount of all discounts and allowances;
- (3) Goods returned to sources or transferred to another store or warehouse;
- (4) Sums and credits received in the settlement of claims for loss or damage to merchandise;
- (5) The reduction allowed on all trade-ins by customers;
- (6) Alteration charges and delivery charges;
- (7) Cash refunds made to customers in the ordinary course of business;
- (8) Interest, service charges, sales charges or other charges, however denominated, paid by customers for the extension of credit;
- (9) Receipts from public telephone and stamp machines;
- (10) Gift certificates or similar vouchers, until such time as they have been converted into a sale by redemption;
- (11) Sales taxes, luxury taxes, consumer excise taxes, gross

receipts taxes and other similar taxes now or hereinafter imposed on the sale of merchandise or services; and

(12) Sales of fixtures, equipment and property which do not constitute stock-in-trade.

(d) Proration of Gross Income. In the event that a portion of the premises is used for marina and/or commercial purposes and a portion is not, then the additional consideration referred to in subparagraph (a) above shall be based only upon the gross income from the marina and/or commercial uses. If the premises are used in conjunction with other land owned or leased by the Lessee, so that the gross income from a marina and/or commercial use is attributable to more than the premises, then the gross income shall be prorated on the basis of gross square footage. That is, the gross square footage of the premises which is used for such marina and/or commercial purposes shall be computed as a percentage of the total land used for such purposes, and that percentage of the gross income shall be used to compute the additional consideration under subparagraph (a) above. This calculation shall include all land which is utilized with respect to the marina and/or commercial use, including, without limitation, parking spaces, driveways and landscaping. However, this calculation shall be limited to the gross income from the particular marina and/or commercial use that takes place on the premises and shall not include gross income from all businesses in the marina complex, shopping center or larger commercial development which the premises may constitute part of. In the event that Lessor and Lessee cannot agree regarding any aspect of this calculation, then they shall submit the matter to arbitration pursuant to subparagraph (e) below.

(e) Arbitration. In the event of any dispute between Lessor and Lessee with respect to the interpretation or enforcement of this covenant, either Lessor or Lessee may require that the matter be submitted to arbitration by providing notice thereof to the other party. The arbitration shall be conducted in accordance with the California Arbitration Act, which is set forth in sections 1280 through 1294.5 of the California Code of Civil Procedure, as amended or superceded from time to time. The cost of such arbitration shall be apportioned in the manner determined by the arbitrator(s).

(f) Tidelands Trust. Notwithstanding the prospective receipt of additional compensation by Lessor, no use of the real property shall be allowed that is inconsistent with the provisions of California Statutes of 1917, Chapter 594, as said statute may from time to time be amended.

7. Ownership of Improvements. All structures, buildings, improvements and landscaping now existing or hereafter installed or constructed by Lessee or any sublessee on and as a part of said demised premises shall be, and without cost to Lessor become, the sole property of Lessor at the termination of this Lease and any valid renewals or extensions thereof, and Lessee shall on demand execute a quitclaim deed with respect thereto. Title to all structures, buildings, or improvements installed or constructed by Lessee or any sublessee shall remain in Lessee or a sublessee until termination of this Lease. Lessor hereby grants to

Lessee fee title to all structures, buildings and improvements existing on the premises as of the date of this Lease.

The foregoing notwithstanding, appliances, fixtures, furniture and furnishings not firmly affixed to said structures, stock in trade, machinery, floating walkways, berthing slips, dry docks, barges, marine railways, cranes, tanks (except sprinkler systems and tanks used therewith), apparatus (except fixed fire protection apparatus), equipment, conveyors, movable partitions and trade fixtures shall remain the property of Lessee or a sublessee, as the case may be.

8. Assignments. Lessee may assign this Lease or sublet the premises, or any part thereof, for a term which shall not extend beyond the term of this Lease (including the renewal period if Lessee's option to renew is exercised). Any assignment or subletting for marina and/or commercial purposes shall be subject to the terms, covenants and conditions of Paragraph 6 above, which relate to the payment of additional compensation to Lessor.

9. Breach. In the event of a breach of any agreement, covenant or condition herein contained on the part of Lessee to be kept and performed, Lessor may, at its option, send Lessee by registered mail a written notice to cure such breach. If Lessee shall fail to cure such breach within such time as may be necessary for Lessee to cure such breach acting with reasonable diligence, this agreement and all rights of Lessee hereunder may be terminated at the option of Lessor. Lessee's time period to cure such breach shall be extended by any period during which Lessee's performance is delayed by strike, riot, war, act of God or any other cause beyond the control of Lessee. In case suit shall be brought because of the breach of any agreement, covenant or condition herein contained on the part of Lessee or Lessor to be kept or performed, the prevailing Party shall pay to the other Party reasonable attorneys' fees which shall be fixed by the court as part of the costs of such suit.

10. Holding Over. Any holding over after the expiration of the term of this Lease for any cause shall be construed to be a tenancy from month to month at any rental selected by Lessor, which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified insofar as applicable.

11. Waiver. The waiver by either party hereto of any breach of any agreement, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or any other agreement, covenant or condition herein contained.

12. Liability. Lessor, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee or any of Lessee's representatives, agents, employees, guests, licensees, invitees, patrons, sublessees or clientele, or of any other persons whatsoever, nor for personal injuries to or death of them, or any of them, caused by or resulting from any acts or omissions of Lessee in or about the demised premises, or any act or omission of any person or from any defect in any part of the demised premises. Lessee further agrees to indemnify and save free and harmless Lessor and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses

incurred by Lessor on account of any claim or claims therefor. Provided, however, that this hold harmless clause between Lessee and Lessor shall not apply to any injury, death or damage caused by Lessor, its officers, employees or authorized agents. Further provided that, in case of liability arising from the joint fault of the Parties hereto, the Parties shall contribute to the discharge of said liability in proportion to their fault.

13. Binding. This Lease shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns (including, without limitation, sublessees of Lessee), as fully and to the same extent as though specifically mentioned in each instance, and all covenants, conditions and agreements in this Lease shall extend to and bind the respective successors and assigns of Lessor and Lessee (including, without limitation, sublessees of Lessee).

14. Time. Time is of the essence hereof.

15. Notices. All notices to be given by the Parties hereto to each other shall be given in writing by registered or certified mail, postage prepaid, and addressed to the respective Parties hereto as follows:

<u>Lessor</u>	<u>Lessee</u>
City Manager City Hall City of Alameda Alameda, California 94501	Encinal Industries, Inc. Post Office Box 2453 Alameda, California 94501

Such addresses may be changed by written notice given by either Party to the other from time to time. Notice shall be deemed received three (3) working days after deposit in any United States Post Office located in the County of Alameda, State of California.

16. Condemnation. If any part of the demised premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the lease payments payable hereunder shall be adjusted so that Lessee shall be required to pay for the remainder of the term only such portion of such lease payments as the value of the part remaining after the condemnation bears to the value of the entire premises at the date of condemnation. If all of the demised premises or such part thereof be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this Lease shall thereupon be terminated. If a part or all of the demised premises be taken or condemned, Lessee and Lessor shall be entitled to their proportionate interests in the condemnation award based upon their respective interests in the demised premises.

17. Reservation of Rights. It is understood and agreed by the parties hereto, as an essential condition of this Lease, that Lessee, by the execution of this Lease and the holding of said premises hereunder, does not waive the right of Lessee to assert at any time and as against Lessor, or any person or other corporation, whatever right, title and interest Lessee may now have, if any, in

and to said premises and every part thereof, independent of the interest conveyed by this Lease, and that Lessee shall not be estopped from claiming that it is now the owner and in the possession and entitled to the possession of said premises and each and every part thereof, and that the condition of an Act of the Legislature of the State of California, approved May 24, 1917, amending an Act of the said Legislature approved June 11, 1913, which conveyed said tide and submerged lands to Lessor, to the effect that, on the termination of any lease therein provided for, any and all improvements placed on the leased premises by the Lessee shall not be binding upon Lessee, its successors and assigns in the event it should be finally determined by a court of competent jurisdiction that Lessee had, at the time of entering into this Lease, any right, title or interest in and to said tide and submerged lands, or any part thereof.

18. Interpretation. For the purposes of this Lease, Lessor and Lessee have used the form of the existing Encinal's Industries Lease, which governs their rights and obligations with respect to certain adjoining tidelands. Accordingly, the terms, covenants and conditions of this Lease shall be interpreted and enforced in accordance with their fair and equitable meaning, without regard to whether Lessor or Lessee prepared this Lease.

[Signatures Follow]

IN WITNESS WHEREOF, this Lease is executed by the City of Alameda as Lessor under and pursuant to Ordinance No. 2147 N.S., and is executed by Encinal Industries, Inc., under and pursuant to a resolution of its Board of Directors.

DATED: September 7, , 19 83.

CITY OF ALAMEDA

By Anne B. Diamant  
Mayor

ATTEST:

Janice B. Felch  
(Deputy) City Clerk

APPROVED AS TO FORM:

Arthur J. Stevens  
City Attorney

DATED: September 7 , 19 83

ENCINAL INDUSTRIES, INC.

By Chengben Wang  
CHENGBEN WANG President

By Ming H. Lin  
MING H. LIN Secretary

EXHIBIT "A" TO TIDELANDS LEASE

ALL THOSE CERTAIN TIDE AND SUBMERGED LANDS SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERN LINE OF TRACT 9 AS SAID TRACT IS SHOWN ON THE MAP ENTITLED, "MAP OF ALAMEDA MARSH LAND, AS PARTITIONED AMONG THE OWNERS THEREOF, IN THE SUIT NUMBERED 8923 AND ENTITLED, PACIFIC IMPROVEMENT COMPANY, PLAINTIFF, VS. JAMES A. WAYMIRE, ET AL., DEFENDANTS, SUPERIOR COURT OF ALAMEDA COUNTY, STATE OF CALIFORNIA," FILED (OR RECORDED) JULY 30, 1900 IN BOOK 25 OF MAPS AT PAGES 74 THROUGH 78, ALAMEDA COUNTY RECORDS, WITH THE PERALTA GRANT LINE, AS SAID GRANT LINE IS ALSO SHOWN ON SAID MAP OF ALAMEDA MARSH LAND, AND THENCE ALONG THE NORTHEASTERLY PRODUCTION OF SAID NORTHWESTERN LINE, NORTH 29° 49' 25" EAST (THE BEARING NORTH 29° 49' 25" EAST BEING TAKEN FOR THE PURPOSE OF MAKING THIS DESCRIPTION), 196.11 FEET TO THE INTERSECTION THEREOF WITH THE U.S. PIERHEAD LINE OF 1948, AS SUCH LINE IS DESIGNATED AND SHOWN ON THE OFFICIAL MAP THEREOF IN THE OFFICE OF THE U.S. ARMY CORPS OF ENGINEERS; THENCE ALONG SAID PIERHEAD LINE, SOUTH 51° 43' 38" EAST, 248.70 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH THE NORTHWESTERN LINE OF GRAND STREET, AS THE SAME NOW EXISTS (80 FEET WIDE); THENCE ALONG LAST SAID LINE SOUTH 29° 49' 25" WEST, 146.61 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH THE AFORESAID PERALTA GRANT LINE; THENCE ALONG SAID GRANT LINE NORTH 42° 55' WEST, 146.69 FEET TO STATION 128 THEREIN AND SOUTH 89° 39' WEST, 122.21 FEET TO THE BEGINNING.

PORTION OF ASSESSOR'S PARCEL NO. 072-0326-003

CITY OF ALAMEDA ORDINANCE NO. 2147  
New Series

AUTHORIZING A 25-YEAR LEASE OF TIDELAND TRUST  
PROPERTY LOCATED AT THE FOOT OF GRAND STREET TO  
ENCINAL INDUSTRIES, INC.

WHEREAS, Encinal Industries, Inc., a California corporation, desires to lease certain tide and submerged lands owned by the City and containing 0.816 acres more or less, described in the form of lease referred to hereinbelow, for a term of twenty-five (25) years, at a total rental of \$3,556 per year, with option of renewal for an additional twenty-five (25) year term, subject to certain periodic percentage increases of said rental sum, for purposes which will benefit, promote and accommodate commerce and navigation, and which will not interfere with same, and which will be in accordance with the provisions of an Act of the Legislature of the state of California, approved May 24, 1917, and found in Statutes of California, 1917, Chapter 594; and

WHEREAS, the City Council finds and determines that the use of said property will be for said purposes, that pursuant to that certain Agreement to Exchange and Lease Real Property authorized by City of Alameda Resolution No. 10012 adopted April 5, 1983, Encinal Industries, Inc. will become owner of uplands abutting upon said lands, and that it will be in the public interest to enter into the proposed lease; and

WHEREAS, a form of lease containing the covenants and agreements by and between the City and said Encinal Industries, Inc. has been prepared and submitted to this Council and is on file in the office of the City Clerk and the Council is aware of and approves the contents thereof;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALAMEDA:

Section 1. That the form of lease referred to in the above recitals, and the terms, conditions, covenants and agreements contained therein be and hereby are approved.

Section 2. That the Mayor be and hereby is authorized to execute on behalf of the City, a lease of real property to Encinal Industries, Inc., said lease to be substantially in the form, and containing the terms, conditions, covenants

and agreements set forth in said form of lease, and the City Clerk is hereby directed to attest to same.

Section 3. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Approved as to form  
*[Signature]*  
CITY ATTORNEY

*Anne B. Diamant*  
\_\_\_\_\_  
Presiding Officer of the Council

Attest:

*Deon Speegle*

\_\_\_\_\_  
City Clerk

\* \* \* \* \*


I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 2nd of August, 1983, by the following vote to wit:

AYES: Councilmembers Gorman, Hanna, Lucas, Monsef and President Diament - 5.

NOES: None.

ABSENT: None.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 3rd day of August, 1983.

  
\_\_\_\_\_  
City Clerk of the City of Alameda

AMENDED AND RESTATED LEASE

This Amended and Restated Lease, dated as of January 6, 1984, is made by and between the CITY OF ALAMEDA, a charter city of the State of California, ("Lessor") and ENCINAL INDUSTRIES, INC., a California corporation ("Lessee").

RECITALS

A. WHEREAS, Lessee and Lessor entered into a lease dated May 17, 1979 (the "Lease");

B. WHEREAS, the property subject to the Lease has been subdivided into eleven (11) parcels ("Parcels") as shown on Parcel Map No. 2938, filed July 19, 1983, in Book 138 of Parcel Maps, at Pages 76 through 80, inclusive, Alameda County Records; and

C. WHEREAS, Lessee and Lessor wish to amend the Lease to reflect such subdivision;

NOW THEREFORE, Lessee and Lessor do hereby agree that the May 17, 1979 Lease and this Amended and Restated Lease constitute a single and continuing Lease and hereby agree to amend the Lease so that such Lease, as amended and restated, shall read in its entirety as follows:

(1) LEASE. Encinal Industries, Inc. (hereinafter referred to as "Lessee"), hereby leases from the City of Alameda (hereinafter referred to as "Lessor") and Lessor hereby leases to Lessee, on the terms and conditions hereinafter set forth, all of that certain real property located in the City of Alameda, County of Alameda, State of California, shown as Parcels 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 on Parcel Map No. 2938, Filed July 19, 1983, in Book 138 of Parcel Maps, at Pages 76 through 80, inclusive, Alameda County Records.

If, at any time during the term of this Lease, or its renewal as herein provided, the location of the U.S. Pierhead Line shall be changed, then the northerly boundary line of the property hereby leased shall be the U.S. Pierhead Line as hereafter so established.

(2) TERM. The term of this Lease shall be for twenty-five (25) years commencing April 5, 1979 and ending on April 4, 2004.

(3) RENEWAL. Lessee shall have an option to renew this Lease with respect to any or all Parcels of the leasehold for a further term of twenty-five (25) years commencing on April 5, 2004 and ending on April 4, 2029. Said option may be exercised by Lessee giving written notice of the exercise of this option at any time at least six (6) months prior to April 5, 2004.

(4) RENTAL. During the first five (5) years of this Lease, Lessee shall pay rental in the amount of \$23,000 per year. This rental shall be allocated amongst the eleven (11) Parcels covered by this Lease as follows:

	<u>Parcel No.</u>	<u>Approx. Acreage</u>	<u>Annual Rent Allocation</u>
	18	0.214	\$ 132.52
	19	0.392	242.74
	20	6.399	3,962.55
	21	0.307	190.11
	22	10.647	6,527.10
	23	7.301	4,521.18
	24	1.661	1,028.57
	25	0.533	330.08
	26	7.132	4,416.46
	27	1.778	1,101.62
	28	0.778	481.77
<b>TOTAL:</b>	<b>11 Parcels</b>	<b>37.142</b>	<b>\$23,000.00</b>

*Handwritten notes:*  
 - "keep" with arrow pointing to Parcel 18.  
 - "No longer have these parcels" with arrows pointing to parcels 22-28.  
 - "7.312" bracketed next to parcels 19-21.  
 - "4,527.92" bracketed next to parcels 22-24.  
 - "No longer have these parcels" written on the right side with arrows pointing to parcels 22-28.  
 - "Parcel 28" written on the right side with an arrow pointing to parcel 28.

The annual rental provided for hereunder shall be paid in advance on April 5th of each year, with the first payment due on April 5, 1979, (or on the date of execution of this Lease, if later).

The annual rental with respect to any Parcel for each subsequent five (5) years of this Lease, and for the renewal term of this Lease, if Lessee exercises its option to renew with respect to any or all Parcels, shall be the amount appearing opposite that Parcel number on the chart in paragraph 1 of this Section (4) plus that same amount multiplied by a fraction, the numerator of which is the value of Lessee's possessory interest in that Parcel (as most recently finally assessed by the Assessor of Alameda County) less "X" ("X" is defined immediately below), and the denominator of which is also "X". "X" for a given Parcel is defined as that dollar amount which bears the same percentage relationship

to \$242,400.00 as the annual rental allocation of that Parcel bears to \$23,000.00 in the chart in paragraph 1 of this Section (4).

In the event that the Assessor of Alameda County discontinues assessing possessory interests in essentially the same manner as is provided for by law as of the date of commencement of this Lease, each party hereto promises to make a good faith effort to agree upon what the assessed possessory interest value would have been if the Assessor had not so discontinued assessing possessory interests.

If the parties do not agree upon what the assessed possessory interest value would have been if the Assessor had not so discontinued assessing possessory interests, for the purpose of computing rent under this Lease the possessory interest value shall be determined pursuant to the rules of the American Arbitration Association by a panel of three (3) arbitrators.

Each party shall bear one-half (1/2) of the cost of such arbitration unless the arbitrators determine that one of the parties hereto did not make a good faith effort to agree prior to arbitration, in which event such party to this Lease shall bear such proportion of the cost of arbitration as the arbitrators, in their discretion, may agree.

(5) ADDITIONAL COMPENSATION. Additional compensation may be required for any substantially different uses approved pursuant to paragraph (7) or (9). The amount of said additional compensation shall be mutually agreed upon.

(6) USE OF PREMISES. The premises may be used by Lessee, its successors and assignees, for the establishment, improvement and conduct of a harbor, for construction, maintenance and operation of wharves, docks, piers, berthing slips, quays and other utilities, warehouses, factories, storehouses, structures, tracks and appliances necessary or convenient for any such purposes and including general or industrial manufacturing incidental to such purposes and for any other lawful purpose, provided that no use of the premises will be made that is inconsistent with the provisions of California Statutes 1917, Chapter 594, as said statute may from time to time be amended.

Nothing herein contained shall be deemed or construed as a franchise to operate a public terminal or public utility on the premises.

(7) SUBSTANTIALLY DIFFERENT USES. Lessor may approve a new use of the premises, or any part thereof, permitted by law, which is substantially different than a use specified in paragraph (6), such as, but not limited to, restaurants, shops, offices and other commercial uses. Lessor may impose any reasonable conditions as a condition to such approval.

(8) OWNERSHIP OF IMPROVEMENTS. All structures, buildings, improvements and landscaping now existing or hereafter installed or constructed by Lessee or any sublessee on and as a part of said demised premises shall be, and without cost to Lessor become, the sole property of Lessor at the termination of this Lease and any valid renewals or extensions thereof, and Lessee shall on demand execute a quitclaim deed with respect thereto. Title to all structures, buildings, or improvements installed or constructed by Lessee or any sublessee shall remain in Lessee or a sublessee until termination of this Lease.

The foregoing notwithstanding, appliances, fixtures, furniture and furnishings not firmly affixed to said structures, stock in trade, machinery, floating walkways, berthing slips, dry docks, barges, marine railways, cranes, tanks (except sprinkler systems and tanks used therewith), apparatus (except fixed fire protection apparatus), equipment, conveyors, movable partitions and trade fixtures shall remain the property of Lessee or a sublessee, as the case may be.

(9) ASSIGNMENTS. Lessee may assign this entire Lease or any Parcel thereof, or sublet the premises, or any part thereof, for a term which shall not extend beyond the term of this Lease (including the renewal period if Lessee's option to renew is exercised). Any assignment or subletting for the purposes of a new use of the premises, or any part thereof, which is substantially different than a use specified in paragraph (6), such as, but not limited to, restaurants, shops, offices and other commercial uses, shall be subject to the approval of Lessor. Such new use may not be inconsistent with the provisions of California Statutes 1917, Chapter 594, as said statute may from time to time be amended. Lessor may impose any reasonable conditions, monetary or otherwise, as a condition to such approval. Approval of any such assignment or subletting for a new use by Lessor in its capacity as Lessor shall not constitute a waiver of any law or ordinance of Lessor pertaining to allowable uses enacted or enforced by Lessor in its exercise of governmental powers.

(10) BREACH. In the event of a breach of any agreement, covenant or condition herein contained on the part of Lessee to be kept and performed, Lessor may, at its option, send Lessee by registered mail a written notice to cure such breach. If Lessee shall fail to cure such breach within such time as may be necessary for Lessee to cure such breach acting with reasonable diligence, this agreement and all rights of Lessee hereunder may be terminated at the option of Lessor. Lessee's time period to cure such breach shall be extended by any period during which Lessee's performance is delayed by strike, riot, war, act of God or any other cause beyond the control of Lessee. In case suit shall be brought because of the breach of any agreement, covenant or condition herein contained on the part of Lessee or Lessor to be kept or performed, the prevailing party shall pay to the other party reasonable attorneys' fees which shall be fixed by the court as part of the costs of such suit.

(11) HOLDING OVER. Any holding over after the expiration of the term of this Lease for any cause shall be construed to be a tenancy from mouth to mouth at any rental selected by Lessor, which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified insofar as applicable.

(12) WAIVER. The waiver by either party hereto of any breach of any agreement, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or any other agreement, covenant or condition herein contained.

(13) LIABILITY. Lessor, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties, or effects of Lessee or any of Lessee's representatives, agents, employees, guests, licensees, invitees, patrons, sublessees or clientele, or of any other persons whatsoever, nor for personal injuries to or death of them, or any of them, caused by or resulting from any acts or omissions of Lessee in or about the demised premises, or any act or omission of any person or from any defect in any part of the demised premises. Lessee further agrees to indemnify and save free and harmless Lessor and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by Lessor on account of any claim or claims therefor. Provided, however, that this hold harmless clause between Lessee and Lessor shall not apply to any injury, death or damage caused by Lessor, its officers, employees or authorized agents. Further provided

that in case of liability arising from the joint fault of the parties hereto, the parties shall contribute to the discharge of said liability in proportion to their fault.

(14) BINDING. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee or sublessees as fully and to the same extent as though specifically mentioned in each instance, and all covenants, conditions and agreements in this lease shall extend to and bind any assigns or sublessees of Lessee.

(15) TIME. Time is of the essence hereof.

(16) NOTICES. All notices to be given by the parties hereto to each other shall be given in writing by registered or certified mail, postage prepaid, and addressed to the respective parties hereto as follows:

LESSOR:

City Manager  
City Hall  
City of Alameda  
Alameda, CA 94501

LESSEE

Encinal Industries, Inc.  
P.O. Box 2453  
Alameda, CA 94501

Such addresses may be changed by written notice given by either party to the other from time to time. Notice shall be deemed received three (3) working days after deposit in any United States Post Office located in Alameda County, State of California.

(17) CONDEMNATION. If any part of the demised premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the Lease payments payable hereunder shall be adjusted so that Lessee shall be required to pay for the remainder of the term only such portion of such lease payments as the value of the part remaining after the condemnation bears to the value of the entire premises at the date of condemnation. If all of the demised premises or such part thereof be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this Lease shall thereupon be terminated. If a part or all of the demised premises be taken or condemned, Lessee and Lessor shall be entitled to their proportionate interests in the condemnation award based upon their respective interests in the demised premises.

(18) RESERVATION OF RIGHTS. It is understood and agreed by the parties hereto, as an essential condition of this Lease, that Lessee, by the execution of this Lease and the holding of said premises hereunder, does not waive the right of Lessee to assert at any time and as against Lessor, or any person or other corporation, whatever right, title and interest Lessee may now have, if any, in and to said premises and every part thereof, independent of the interest conveyed by this Lease, and that Lessee shall not be estopped from claiming that it is now the owner and in the possession and entitled to the possession of said premises and each and every part thereof, and that the condition of an Act of the Legislature of the State of California, approved May 24, 1917, amending an Act of the said Legislature approved June 11, 1913, which conveyed said tide and submerged land to Lessor, to the effect that on the termination of any lease therein provided for, any and all improvements placed on the leased premises by the Lessee shall revert to Lessor, its successors and assigns in the event it should be finally determined by a court of competent jurisdiction that Lessee had, at the time of entering into this Lease, any right, title or interest in and to said tide and submerged lands, or any part thereof.

(19) CANCELLATION OF EXISTING LEASE. That certain Indenture made and entered into by and between Lessor and Alaska Packers Association, as to which Lessee is successor in interest to Alaska Packers Association, is hereby cancelled and terminated.

IN WITNESS WHEREOF, this Amended and Restated Lease is executed by the City of Alameda as Lessor pursuant to Ordinance No. 2168, N.S. and by Encinal Industries, Inc. under and pursuant to a resolution of its Board of Directors as of the date and year first written above.

ENCINAL INDUSTRIES, INC.

CITY OF ALAMEDA

By: [Signature]  
Its President

By: [Signature]  
Mayor

Attest:

Attest:

[Signature]

[Signature]  
City Clerk DEPUTY CITY CLERK

Approved as to Form:

[Signature]  
City Attorney

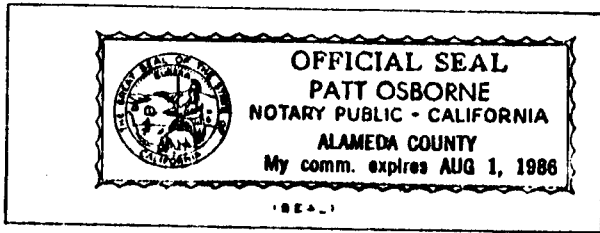


Encinal Industries, Inc.

State of California }  
County of Alameda } ss.

On this 6th day of January, in the year 1984 before me Patt Osborne  
Notary Public, personally appeared Chengshue Wang, personally

known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary) or on behalf of the corporation therein named and acknowledged to me that the corporation executed it.



ATTORNEYS PRINTING SUPPLY CO. INC. NO. 7  
CC 1192 1193 1194 1195 1196 1197 1198 1199

Patt Osborne  
Notary Public for California

## GROUND LEASE MODIFICATION AND GROUND LEASE ESTOPPEL

WHEREAS, the City of Alameda, a charter city of the State of California (hereinafter "Landlord"), has heretofore leased certain lands described on Exhibit A attached hereto (hereinafter the "Premises") to Encinal Industries, Inc., a California corporation (hereinafter "Tenant") pursuant to an Amended and Restated Lease dated as of January 6, 1984, a memorandum of which lease was recorded on January 12, 1984, as Document # 007439, in the Office of the Recorder of Alameda County, California (hereinafter the "Lease");

WHEREAS, Tenant is desirous of obtaining from Secore Financial Corporation, having an office at 3 Bethesda Metro Center, Suite 700, Bethesda, Maryland 20814 (hereinafter, together with its successors and assigns, "Lender") a loan secured in part by a first leasehold mortgage upon Tenant's interest as tenant in the Lease (hereinafter the "Loan"), for which Lender has issued its commitment dated August 21, 1997 (the "Commitment") to make the Loan upon the terms and conditions set forth in the Commitment;

WHEREAS, Lender is unwilling to make the Loan unless the Lease is modified as set forth below to reflect customary leasehold mortgage provisions and unless Landlord delivers the estoppel as set forth;

NOW THEREFORE, Landlord and Tenant agree to modify the Lease as follows and Landlord hereby certifies to Lender as follows:

1. Upon the recording of the Leasehold Mortgage, Landlord hereby recognizes Lender as leasehold mortgagee and assignee.
2. Upon providing Tenant any notice under the Lease of a default or of any matter on which a default might be predicated, Landlord shall simultaneously provide Lender with such notice. No such notice shall be deemed to have been given unless Lender has received a copy thereof, but Landlord may conclusively establish Lender's receipt of a notice by obtaining a U. S. Post Office Return Receipt since the terms of the Lease require all notices to be sent by certified or registered mail. From the date Lender receives such notice, as established by the date of delivery shown on the Return Receipt, Lender shall have the same period as is given Tenant for remedying any default or any acts or omissions which are the subject of such notice. Landlord shall accept such performance by or at the instigation of Lender as if the same had been done by Tenant.
3. The Lease shall not be modified, terminated or canceled, nor shall a surrender of the Premises be accepted without the prior written consent of Lender.

4. In the event of a foreclosure by Lender of the Leasehold Mortgage, Landlord hereby agrees to acknowledge Lender as tenant by attornment and that:

(a) Title to all improvements including the Building, as defined in the Lease, situate on the Property, as defined in the Lease, shall automatically vest in Lender until termination of the Lease, pursuant to § 8 thereof;

(b) Landlord shall promptly assign to Lender all space leases and subleases whose tenants have attorned, with the consent of Lender, to Landlord.

5. Landlord agrees that the Leasehold Mortgage shall not be subject or subordinate to any mortgage encumbering the fee estate of the Premises.

6. Landlord agrees that Lender may be insured under any hazard insurance policies obtained by Tenant with respect to the Premises and that the proceeds payable under any such policies will be payable to Lender in accordance with the terms of the Leasehold Mortgage;

7. Landlord hereby agrees that Lender shall have the right, pursuant to the terms of the Lease, to exercise any option to renew the term of the Lease, if the lessee under the Lease shall fail to exercise any option to so renew.

8. Landlord hereby certifies:

(a) Landlord is the owner of the fee simple estate in the Premises and is the Landlord under the Lease;

(b) Landlord has not mortgaged the fee simple estate in the Premises and there are currently no fee simple mortgages, deeds of trust or other security interests encumbering the fee estate in the Premises.

(c) The Lease is in full force and effect in accordance with its terms and has not been further assigned, supplemented, modified or otherwise amended except as set forth in Exhibit A attached hereto.

(d) To the best of Landlord's knowledge, each of the obligations on Tenant's part to be performed to date under the Lease or under any other agreement described in Exhibit A attached hereto have been performed.

(e) To the best of Landlord's knowledge, there are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease, or any amounts owing under any other agreement described in Exhibit A attached hereto, except as set forth in Exhibit A attached hereto.

(f) None of the matters set forth in Exhibit A attached hereto are untrue or incorrect and, without limitation on the foregoing, there are, with respect to the Lease, no options to renew or extend, and no security deposits or prepaid rents or liens, except as set forth therein.

(g) Except as set forth in Exhibit A attached hereto, there do not exist any other agreements (including Subordination, Non-Disturbance and Attornment Agreements) concerning the Premises, whether oral or written between Landlord and Tenant under the Lease (or its predecessors or successors).

(h) As of the date hereof, no basic rent or additional rent is due from Tenant under the Lease, except as set forth in Exhibit A attached hereto. Basic rent due under the Lease has been paid through March 31, 1998.

(i) The term commencement date of the Lease was April 5, 1979, and the initial term of the Lease shall expire 25 years from said term commencement date, i.e., April 4, 2004. Section 3 of the Lease contains an option for Tenant to renew the Lease for an additional twenty-five (25) year term, from April 5, 2004, until April 4, 2029.

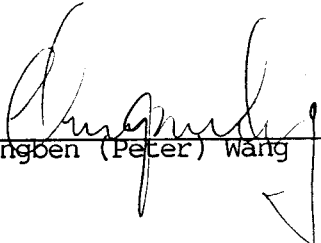
This Certificate and the representations made herein shall inure to the benefit of Lender, its successors and assigns and shall be binding on the Landlord and its legal representatives, successors and assigns.

Executed this 8th day of October, 1997.

Encinal Industries, Inc.

City of Alameda

By:

  
Chengben (Peter) Wang

**Approved as to Form  
CITY ATTORNEY**

By:   
Assistant City Attorney

EXHIBIT A

DESCRIPTION OF PREMISES:

Parcel 20 of Parcel Map No. 2938, filed July 19, 1983, in Book 138 of Parcel Maps, at Pages 76 through 80, inclusive, Alameda County Records.

AMENDMENTS, MODIFICATIONS, ASSIGNMENTS  
AND OTHER SUPPLEMENTAL DOCUMENTS:

NONE

DEFAULTS AND THREATENED DEFAULTS:

NONE

OFFSETS, COUNTERCLAIMS, DEFENSES,  
DEDUCTIONS AND CREDITS:

NONE

OPTIONS TO RENEW:

AS SET FORTH IN SECTION 3 OF THE LEASE

SECURITY DEPOSITS:

NONE

PREPAID RENTS AND LIENS:

NONE

SUBORDINATIONS, NON-DISTURBANCE  
AGREEMENTS AND ATTORNMENT AGREEMENTS:

NONE

RENT DUE:

NONE

OTHER MATTERS:

NONE

## ASSIGNMENT OF GROUND LEASE

This Assignment of Ground Lease (the "Assignment") is made as of January 24, 2013, by and between ENCINAL REAL ESTATE, INC., a California corporation (the "Assignor,") and NORTH WATERFRONT COVE LLC, a Delaware limited liability company (the "Assignee").

### Recitals

A. WHEREAS, the City of Alameda, a charter city of the State of California, as Lessor, and Encinal Industries, Inc., a California corporation ("EI"), as Lessee, entered into an original lease as of May 17, 1979 (the "Original Lease"); and

B. WHEREAS, Lessor and EI entered into an Amended and Restated Lease with respect to Parcels 18, 19, 20 and 21 (as more particularly described in the Original Lease) dated as of January 6, 1984 (the Original Lease, the Amended and Restated Lease, and the amendments, modifications, extensions and/or assignments described in this Assignment are referred to collectively herein as the "Lease"); and

C. WHEREAS, a Memorandum of the Amended and Restated Lease was recorded in the Official Records of Alameda County on January 12, 1984 as Instrument No. 84-007439; and

D. WHEREAS, Lessor and EI entered into that certain Ground Lease Modification and Ground Lease Estoppel executed as of October 8, 1997 (the "Modification"); and

E. WHEREAS, by means of an Assignment of Lease dated as of January 22, 1998 and recorded in the Official Records of Alameda County on January 26, 1998 as Instrument No. 98025888, EI assigned to Assignor EI's interest in the Lease solely with respect to Parcel 20 of Parcel Map No. 2938, filed July 19, 1983, in Book 138 of Parcel Maps, at Pages 76 through 80, inclusive, Alameda County Records; and

F. WHEREAS, the original term of the Lease was for twenty-five (25) years from April 5, 1979 until April 4, 2004; and

G. WHEREAS, the Amended and Restated Lease granted the tenant an option to extend the Lease for an additional twenty-five (25) years, until April 4, 2029; and

H. WHEREAS, Assignor exercised its option to extend the Lease by means of a written notice given to Lessor dated October 22, 2003, and acknowledged by Lessor in a letter dated November 6, 2003; and

I. WHEREAS, Assignor now desires to assign the Lease to Assignee, and Assignee desires to accept the assignment of the Lease;

THEREFORE, Assignor and Assignee agree as follows:

## Assignment

1. Assignment and Assumption. For value received, Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Lease, a copy of which is attached to this Assignment as Exhibit A, and Assignee agrees to and does accept the assignment of the Lease. Assignee expressly assumes and agrees to keep, perform, and fulfill all the terms, covenants, conditions, and obligations, required to be kept, performed, and fulfilled by Assignor as Lessee under the Lease, including the making of all payments due to or payable on behalf of Lessor under the Lease when due and payable.

2. Power and Authority. Each of the parties represents that it is fully empowered and authorized to execute and deliver this Assignment, and the individual signing this Assignment on behalf of such party represents and warrants to the other that he or she is fully empowered and authorized to do so.

3. Attorneys' Fees. In the event of any dispute between the parties, whether based on contract, tort or other cause of action or involving bankruptcy or similar proceedings, in any way related to this Assignment or the Property, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees and costs and expenses of any type, without restriction by statute, court rule or otherwise, incurred by the prevailing party in connection with any action or proceeding (including arbitration proceedings, any appeals and the enforcement of any judgment or award), whether or not the dispute is litigated or prosecuted to final judgment. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any fees and costs incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment.

4. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, legal representatives, successors and assigns.

5. Counterparts. This Assignment may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when all parties have delivered their signatures to the other parties. Signatures may be delivered by facsimile transmission or by e-mail in a portable document format (pdf). All counterparts shall be deemed an original of this Assignment.

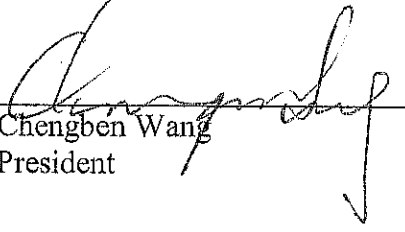
6. Governing Law. This Assignment shall be governed and interpreted in accordance with the laws of the State of California.

7. Exemption from Transfer Tax. This Assignment is being delivered in accordance with California Revenue and Taxation Code section 11923, pursuant to the following orders made and filed in the United States Bankruptcy Court for the Northern District of California (San

Jose Division) in In re ENCINAL REAL ESTATE, INC., Tax ID: 94-2724002, Debtor, Case No. 11-61446 CN 11: ORDER GRANTING MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS [APNs 072-0382-002, 072-0382-001, and 072-0382-003], Docket No. 276 and ORDER CONFIRMING CREDITOR ALCATRAZ TERMINAL, LLC'S MODIFIED JOINT PLAN OF REORGANIZATION (JULY 3, 2012) AS FURTHER MODIFIED IN OPEN COURT, Docket No. 289. Pursuant to said Orders, and II U.S.C. §1146(a), the transfer of the Property hereunder will not be subject to any documentary transfer tax or similar tax, or filing or recording fee; accordingly, state and local governmental officials or agents shall forego the collection of any such tax or fee and accept for filing and recordation this Assignment or other related documents without the payment of any such tax or fee.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Executed at \_\_\_\_\_, California, on the day and year first above written.

<p><b>ASSIGNOR:</b></p> <p>Encinal Real Estate, Inc., a California corporation</p> <p></p> <p>By: Chengben Wang Its: President</p>	<p><b>ASSIGNEE:</b></p> <p>NORTH WATERFRONT COVE LLC, a Delaware limited liability company</p> <p>By: Marina View L.P. a California limited partnership Its: Managing Member</p> <p>By: TL Management, Inc., Its: General Partner</p> <p>By: J. Timothy Lewis Its: President</p>
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Executed at ROSEVILLE, California, on the day and year first above written.

<p><b>ASSIGNOR:</b></p> <p>Encinal Real Estate, Inc., a California corporation</p> <hr/> <p>By: Chengben Wang Its: President</p>	<p><b>ASSIGNEE:</b></p> <p>NORTH WATERFRONT COVE LLC, a Delaware limited liability company</p> <p>By: Marina View L.P. a California limited partnership Its: Managing Member</p> <p>By: TL Management, Inc., Its: General Partner</p> <hr/> <p>By: J. Timothy Lewis Its: President</p>
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