

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 ~~Three thousand five hundred fifty six~~ 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, 1983.

CITY OF ALAMEDA

By Ann B. Diamant
Mayor

ATTEST:

Deane B. Felich
(Deputy) City Clerk

APPROVED AS TO FORM:

Andrew J. Starnes
City Attorney

DATED: September 7, 1983

ENCINAL INDUSTRIES, INC.

By Chengben Wang
CHENGBEN WANG President

By Ming H. Lin
MING H. LIN Secretary