

RECEIVED

SEP 4 9 20 AM '96

GEORGE
REGISTERED
DOUGLAS COUNTY, NE



1186 537 MISC



09959 96 537-613

9959

MB
35-15-12 *See attached*

T

FEE 39200 R	FB 01-60000
DEL.	C/O COMP <i>V</i>
LEGAL PG	SCAN <i>X</i> / FV

THIS PAGE INCLUDED FOR

INDEXING

PAGE DOWN FOR BALANCE OF INSTRUMENT

ASSIGNMENT OF CONTRACTS AND LEASES, AND AGREEMENT
(Town & Country Locations)

This Assignment of Contracts and Leases, and Agreement is executed as of, but not necessarily on, this 29th day of August, 1996, by E. Neil Stanfield ("Stanfield"), as trustee ("Trustee") of the consolidated bankruptcy estates of United American Fuels, Inc., Hudson-Farris Corporation, Benson 66 Service, Inc. (the "Corporations"), Benvest, L.P., Hudvest, L.P. and Cam-Dell Enterprises, L.P. (the "Partnerships; the Corporations and the Partnerships, collectively, "Debtors"), and Contemporary Industries Corporation, a Nevada corporation ("Assignee"), with reference to the following:

1. By Trustee Quit Claim Deed, dated as of August 29, 1996, Trustee has conveyed to the Assignee all of his interest in the leasehold estates in the real property described on Exhibit "A", attached hereto and by reference made a part hereof, and the improvements situated on such real property and the appurtenances thereunto belonging (the "Real Property").

2. By Trustee Quit Claim Bill of Sale, dated as of August 29, 1996, Trustee has conveyed to the Assignee the personal property owned by Trustee or Debtors and located on the Real Property (the "Personal Property"; the Real Property and the Personal Property, collectively, the "Property").

3. By means of this instrument, Trustee will assign to the Assignee all leases and contracts covering any part of the Property and all rents, issues, profits and deposits with respect thereto, and Assignee will assume all rights, obligations and duties under, and will agree to indemnify and hold Trustee harmless from any and all liability arising from, the Assumed Contracts (defined below) after the date of this Assignment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Trustee hereby assigns, transfers and sets over unto the Assignee all leases and contracts covering any part of the Property, including, without limitation, the leases and contracts described on Attachment "1" annexed hereto and made a part hereof, and all rents, issues, profits and deposits (whether security deposits or otherwise) thereunder (collectively, the "Assumed Contracts").

Assignee accepts any liability and assumes the obligations and duties relating to the Assumed Contracts from and after the date of this Assignment, and Assignee shall be responsible for, and shall indemnify and hold Trustee, the Debtors and the Debtors' bankruptcy estate harmless from and against any and all claims, demands, suits, damages, losses, obligations, liabilities and expenses (including reasonable attorneys, fees) arising out of Assignee's failure to perform and

discharge all obligations and duties arising from the Assumed Contracts after the date of this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date set forth above.

By: E. Neil Stanfield
E. NEIL STANFIELD, TRUSTEE FOR THE
CONSOLIDATED BANKRUPTCY ESTATES OF
UNITED AMERICAN FUELS, INC., HUDSON-
FARRIS CORPORATION, BENSON 66 SERVICE,
INC., BENVEST, L.P., HUDVEST, L.P. AND
CAM-DELL ENTERPRISES, L.P., JOINTLY
ADMINISTERED UNDER CASE NO. 94-13510-BH
(CHAPTER 11), UNITED STATES BANKRUPTCY
COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA

CONTEMPORARY INDUSTRIES CORPORATION, a
Nevada Corporation

By: Bruce E. Dawson
Bruce E. Dawson President

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

This instrument was acknowledged before me on August 29, 1996, by E. Neil Stanfield, trustee for the consolidated bankruptcy estates of United American Fuels, Inc., Hudson-Farris Corporation, Benson 66 Service, Inc., Benvest, L.P., Hudvest, L.P. and Cam-Dell Enterprises, L.P., jointly administered under Case No. 94-13510-BH (Chapter 11), United States Bankruptcy Court for the Western District of Oklahoma.

Michelle R. Smith
Notary Public

My Commission Expires:

May 1, 2000
(SEAL)

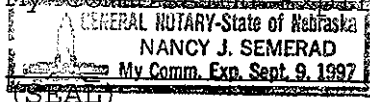
STATE OF Nebraska)
)
COUNTY OF Douglas)

ss.

This instrument was acknowledged before me on
8-29, 1996, by Bruce E. Dawson, _____ President of
Contemporary Industries Corporation.

Nancy J. Semerad
Notary Public

My Commission Expires:



21/uaf-T&C.ass

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

EXHIBIT "A"
Real Property

Leasehold interests in:

Lots 5 and 6, in Block 4, in WEST LAWN PARK ADDITION, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska ("Center Street");

That part of Lots 1, 2, 3, 4 and 5, in block 14, in POPPLETON PARK ADDITION, an Addition to the City of Omaha, in Douglas County, Nebraska, described as follows: Beginning at the point of intersection of the Southerly R.O.W. line of the Omaha Beltline Railway; thence Easterly on the Southerly R.O.W. line of California Street on the following described courses; thence S 89° 01'20" E (assumed bearing), 36.75 feet; thence S 00° 58'40" W, 1.00 foot; thence S 74° 59'37" E, 36.59 feet; thence S 61° 01'01" E, 27.58 feet; thence S 86° 47'36" E, 24.55 feet to a point on the West line of the Derby Refining Company property as recorded in Deed Book 1627, Page 316 in the Douglas County Register of Deeds; thence S 01° 47'20" W on the West line of said Derby Refining Company property, 171.09 feet; thence N 89° 29'00" , 115.37 feet to a point on the East R.O.W. line of said Omaha Railway, 195.80 feet to the point of beginning ("Saddle Creek");

A tract of land located in the Southwest Quarter of Section 35, Township 15 North, Range 12 East of the 6th P.M., in Douglas County, Nebraska, more particularly described as follows: Commencing at the West Quarter corner of said Section 35-15-12; thence South 00°05' West (assumed bearing) along the West line of the Southwest Quarter of said Section 35 a distance of 48 feet; thence South 81°08' East a distance of 97.5 feet; thence South 11°59' East a distance 112.4 feet along the Northeasterly right-of-way line of Interstate Highway No. 80 interchange to a point of curvature of a 3.1661° curve; thence along said 3.1661° curve (with Northerly tangent bearing of South 08°52' West) to the left for a distance of 271.25 feet to a point of tangency; thence South 89°43' East, perpendicular to the tangent line of said 3.1661° curve a distance 37.00 feet to a point; thence North 00°17'00" East a distance

55-
42700

10-
30940

NW SW

of 81.87 feet to the point of beginning; thence continuing North 00°17'00" East a distance of 106.70 feet; thence South 81°11'15" East a distance of 119.18 feet; thence North 60°33'45" East a distance of 56.25 feet; thence North 08°48'45" East a distance of 42.00 feet to a point on the southerly bank of the Big Papillion Creek, thence South 52°21'10" East along said Southerly bank of the Big Papillion Creek a distance of 46.64 feet; thence South 00°14'42" West a distance of 210.10 feet to the point of beginning; EXCEPT a tract of land located in part of the Southwest One-Quarter of Section 35, Township 15 North, Range 12 East of the 6th P.M., in Douglas County, Nebraska, described as follows: Commencing at the West One-Quarter corner of said Section 35; thence South 02°08'42" East (assumed bearing) along the West line of said Southwest One-Quarter and along the centerline of 84th Street 255.14 feet; thence North 87°51'18" East 135.85 feet; thence South 83°30'20" East 119.18 feet; thence North 58°13'02" East 23.16 feet to the point of beginning; thence continuing North 58°13'02" East 33.09 feet; thence North 06°23'37" East 41.99 feet to the Southerly bank of the Big Papillion Creek; thence South 54°34'21" East along said Southerly bank 46.43 feet; thence South 02°04'07" East 107.39 feet to a point on the proposed Southwesterly right-of-way line of said Big Papillion Creek; thence along said proposed Southwesterly right-of-way line on the following two described courses: (1) North 45°58'32" West 51.34 feet; (2) thence North 43°39'09" West 54.46 feet to the point of beginning ("South 84th Street");

Lots 1, in Block 2, in THORNBURG PLACE, EXCEPT, the North five feet of the West five feet deeded to the City of Omaha, an addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska ("Leavenworth");

Lot 10, in Block 93, in SOUTH OMAHA, now a part of the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska ("South 24th Street"); and

The East 190 feet of Sublot 1 of Lots 5 and 6, and the East 54 feet of the North 10 feet of Sublot 8 of Lot 6, and the East 14 feet of

20 -
38400

04-81000

Sublot 10 of Lot 6, in CAPITOL ADDITION, an
Addition to the City of Omaha, as surveyed,
platted and recorded, in Douglas County,
Nebraska ("Farnam Street").

23-
05660

ATTACHMENT "1"
Assumed Contracts

1. Sublease Agreement, dated February 7, 1994, by and between Total Petroleum, Inc. and The Benson Corporation (covering Center Street, North Saddle Creek, South 84th Street and Leavenworth);

2. Sublease Agreement, dated February 7, 1994, by and between Total Petroleum, Inc. and The Benson Corporation (covering South 24th Street and Farnam Street); and

3. The executory contracts and unexpired leases relating solely to the Covered Property which may be identified by Purchaser and, in his sole discretion, agreed upon by Trustee prior to the Bankruptcy Court's approval of the transaction contemplated by this Agreement.

SUBLEASE AGREEMENT

TOTAL PETROLEUM, INC.

1. Parties.

This Sublease, dated this 7TH day of FEBRUARY, 1994, is entered into between TOTAL PETROLEUM, INC., a Michigan corporation, as "Landlord," whose address is 900 19th Street, TOTAL Tower Suite 2201, Denver, Colorado 80202, and The Benson Corporation, a Delaware corporation, whose address is 200 Essex Court, Omaha, Nebraska 68114 as "Tenant", hereinafter referred to as the "Lease".

2. Premises.

In consideration of the performance of the terms, covenants and conditions hereinafter set forth, including the payment of Rent by Tenant, Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, the four (4) properties (referenced to individually as a "Site") legally described on Exhibit A-1 attached hereto (the "Premises"). The Premises shall include the underground storage tanks and piping appurtenant thereto which are located on the Premises (the "UST System") as well as those fixtures and items of personal property listed on attached Exhibit A-2.

3. Use.

- A. The Premises are to be used as a gasoline service station/convenience store and for no other purpose without the prior written consent of Landlord ("Permitted Use").
- B. In no event shall any use by Tenant be made or permitted to be made of the Premises, nor acts done, which are improper, immoral, unlawful or which have an objectionable purpose.
- C. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or government rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or

requirement, shall be conclusive of that fact as between Landlord and Tenant.

- D. Tenant shall not permit any employee, agent or invitee of the Tenant to violate any covenant or obligation of the Tenant hereunder.

4. **Underground Storage Tank Upgrades or Replacements.**

Landlord and Tenant acknowledge that Title 40 C.F.R. Part 280 requires all underground storage tank systems to either be upgraded to meet specific standards set forth in such regulations or replaced by December 22, 1998. Therefore, the UST Systems covered by this Lease must be upgraded or replaced by such date. Pursuant to Section 11 of this Lease, Tenant is required to maintain the Premises in accordance with all applicable laws and regulations.

In no event shall Tenant be entitled to a reduction in rent or to damages nor shall Tenant have any right of offset against the rent or any other sums due hereunder as a result of any temporary closure or interference with Tenant's operations on the Premises during the replacement or upgrade of the UST System by Tenant.

5. **Rent.**

Tenant covenants to pay to Landlord by electronic funds transfer on or before the first day of each month during the Lease Term, without offset, deduction, abatement, notice or demand, in U.S. Dollars, the following amounts: the rent for the Premises, exclusive of real estate taxes, assessments and operating expenses (the "Rent"), shall be as follows: Year 1 = Eleven Thousand Six Hundred Dollars (\$11,600.00) per month to be allocated one quarter or Two Thousand Nine Hundred (\$2,900.00) per month per Site. Each year thereafter the rent shall be adjusted as follows:

- A. Rent - Consumer Price Index Adjustment. The annual adjustment shall be effective for the year for which the adjustment is made and for the following years until another adjustment is to be made or until the expiration of the Primary Term.

(1) In this paragraph:

- (a) "Base Year" means the first one (1) year period of the term of this Lease. If the Lease commences in the middle of the month, the following month is the first month of the one (1) year period of the Base Year.
- (b) "Price Index" means the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items, (1982-1984 = 100).

- (c) "Price Index for the Base Year" means the Price Index for the month preceding the first month of the Base Year.
- (d) "Price Index for Adjustment" means the Price Index for the month preceding the month for which an adjustment is to be made.
- (2) The annual adjustment will be based on the percentage difference between the Price Index Adjustment and the Price Index for the Base Year as follows:
 - (a) \$11,600.00 will be multiplied by the percentage or difference between the Price Index for Adjustment and the Price Index for the Base Year, and the product will be added to the \$11,600.00 effective as of the first month for which the adjustment is to be made.

The adjustment is to be made only when the Price Index for Adjustment is greater than the Price Index for the Base Year.

If the Price Index (or a successor or substitute index) is not available or is no longer applicable, a reliable governmental or other non-partisan publication evaluating the information used in determining the Price Index will be used.

- (3) The Tenants delay or failure of Tenant in computing the adjustment beyond the month for which the adjustment is to be effective will not impair the continuing obligation of Tenant to pay rent adjustments.
- (4) The adjustment will be allocated one quarter per Site.
- B. In the event the Commencement Date does not fall on the first day of the month, then the Rent for said month shall be prorated by dividing the Rent by the number of days in that month and multiplying the resulting quotient by the remaining days in that month (including the Commencement Date).
- C. In the event the entire amount of Rent due for any month is not paid by the third day of said month, Tenant shall be charged a late charge equal to 5% of the total amount of Rent due for said month. Additionally, any amount of Rent past due or late charge assessed will accrue

interest at the rate of 15% per annum until paid. Payments received from Tenant shall be applied first to any charges or interest due to Landlord and the balance to Rent due.

- D. As provided in Section 5, the rent is to be paid by electronic funds transfer. Tenant is signing the attached Total Petroleum, Inc. Authorization Agreement for Funds Transfers at the time of executing this Lease. In the event Tenant desires to close the account indicated on the Authorization Agreement, it will notify Landlord prior to closing the account and sign an authorization agreement for funds transfer to another account so that Rent will continue to be paid by electronic funds transfer without disruption.

6. Term.

- A. The term of this Lease shall have a term of NINETEEN (19) years, THREE (3) months and TWENTY TWO (22) days and is referred to herein as the "Lease Term," and shall commence on February 14, 1994.
- B. Under the terms of its lease of the Premises, Landlord has an option to renew such lease for a period of ten (10) years. In the event that Landlord elects to renew such lease, Tenant shall have the option of renewing this sublease for such ten (10) year period (the "Renewal Term"). If Landlord elects to renew the term of its lease, Landlord shall so notify Tenant not less than six months prior to the expiration of this Lease. Tenant shall have thirty (30) days within which to notify Landlord in writing of Tenant's election to renew this Lease. The rent for the Renewal term shall be determined as set forth on Exhibit B.
- C. This Lease shall terminate on June 7, 2013, (the "Termination Date") without the necessity of any notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives notice to vacate or quit the Premises. If Tenant remains in possession of the Premises after the Termination Date, in the absence of any written agreement extending the Lease Term, the tenancy under this Lease shall, at Landlord's option, either (a) become a month-to-month tenancy, terminable by either party on thirty (30) days prior written notice, at a monthly rental equal to 200% of the last Rent in effect under this Lease and shall be subject to all other conditions, provisions and obligations of this Lease; or (b) be deemed to have terminated as of the Termination Date. Tenant shall then be considered a trespasser subject to statutory eviction proceedings and shall be liable to Landlord for any and all damages suffered by

Landlord as a result of Tenant holding over and failing to vacate the Premises on the Termination Date. Landlord shall notify Tenant, in writing, within ten (10) days after the Termination Date as to which option Landlord shall choose to exercise.

7. Net Lease.

- A. It is the intent and purpose of this Lease that Landlord not incur any cost or expense whatsoever in owning and leasing the Premises to Tenant including, but not limited to, any cost (including taxes) and expense of occupying, maintaining, repairing, improving, insuring and subletting the Premises. All of said costs shall be borne by Tenant. It is intended hereby that Landlord shall receive the rental payments hereunder absolutely and completely net to Landlord. Tenant agrees to promptly and completely pay for any item, cost or expense not expressly enumerated within this Lease that otherwise would be incurred by Landlord.
- B. This Sublease is subject and subordinate to the lease (the "Prime Lease") between Phillip G. Ruffin and Town & Country Food Markets, Inc., as landlord, and Total Petroleum, Inc., as tenant, a copy of which has been delivered to Tenant by Landlord simultaneously with the execution and delivery of the Sublease. Tenant agrees that it shall comply with all terms and conditions of the Prime Lease as though Tenant were the tenant thereunder, provided, however, that in the event of a conflict between an obligation created under the terms of the Prime Lease and the terms of this Sublease, the terms of this Sublease shall control.
- C. Tenant acknowledges that Tenant's obligation to pay any and all rent hereunder, to make all other rent payments required hereunder and to perform and observe all other obligations and agreements hereunder shall be absolute and unconditional and, except as specifically provided in other Sections of this Lease, neither this Lease nor any obligations or agreements shall terminate, nor shall Tenant be entitled to any abatement, reduction, set-off, counterclaim or other deduction with respect to any rent or any other sum payable hereunder; nor shall the obligations of Tenant hereunder to pay rent be affected by any reason of any damage or destruction of the Premises; any taking of the Premises or any part thereof by condemnation or otherwise; any prohibition, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises or any interference with such use, occupancy or enjoyment by any person; any default by Landlord or Tenant hereunder or under any other agreement, or the impossibility or illegality of

performance by Landlord, Tenant or both; any action of any governmental authority; or any other cause whether similar or dissimilar to the foregoing. It is the intention of the parties hereto that the rental payments and any of the sums payable hereunder shall be paid by Tenant as absolute obligations without diminution for any reason. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease. Tenant shall have the right, however, by separate and independent action, to pursue any claims it may have against Landlord.

- D. Tenant shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any assignee of Landlord or action with respect to this Lease which may be taken by any trustee, receiver, or liquidator or by any court. Except as otherwise provided in this Lease, Tenant waives all rights to terminate or surrender this Lease, or to abatement or deferment of rent or other sums payable hereunder.

8. Payment of Taxes.

In addition to the Rent payable pursuant to Section 5 above, Tenant shall also pay the following:

- A. Any and all real estate, personal property, and ad valorem taxes applicable to the Premises, including any and all special or general assessments for any and all periods of time that this Lease is in effect. Real estate taxes shall mean all general property taxes, real or personal, (excluding income taxes of Landlord) which may be levied during the term of this Lease. No general or special assessments may be deferred for payment beyond the term of this Lease. Said payments shall be made directly to the taxing authorities to the extent possible. Taxes shall be prorated between the parties based on the Commencement Date of the Lease.
- B. In the event such taxes are eliminated or reduced by any federal, state or municipal body or governmental agency having jurisdiction thereof, and other taxes imposed by way of substitution for, or in addition thereto, all such taxes then substituted or additional tax (excluding income taxes of Landlord) shall be included as taxes to be paid by Tenant pursuant to this Lease.

- C. Said taxes shall be timely paid and copies of paid receipts shall be submitted to Landlord within thirty (30) days of receipt by Tenant of such paid receipts.
- D. Tenant shall take all action necessary to receive such notice of tax assessments and amounts due directly from the taxing authorities. Tenant shall have the right, but not obligation, to contest the taxes or amounts thereof with the proper taxing authority, but at no cost or expense to Landlord. If Tenant elects to so contest, it shall do so by appropriate proceedings diligently contested in good faith. Notwithstanding such proceedings, the contested taxes shall be promptly paid and discharged by Tenant, unless such proceedings (and where necessary the posting of an appropriate bond or other security) shall operate to prevent or stay the collection of the taxes and secure any accruing penalties or interest and to cure any default in the payment of taxes required under any mortgage upon the Premises. If Landlord is required to join in the proceedings, it shall do so provided Tenant shall pay all costs and expenses incurred by Landlord.
- E. Tenant shall promptly pay all costs associated with the occupancy, use, maintenance, repair, utilities and licenses.

~~9. Security Deposit.~~

~~Prior to the execution of this Lease, Tenant has deposited with Landlord a sum equal to one (1) month's Rent. Said sum shall be held by Landlord as additional security for the faithful performance by Tenant of all the terms of this Lease. If Tenant defaults with respect to any provisions of this Lease, Landlord may apply any part of this security deposit to the payment of any sum in default, accrued interest, late payment fees or for the payment of, or to compensate Landlord for, any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the security deposit is so applied, Tenant shall immediately deposit cash with Landlord to restore the security deposit to its original amount. In no event shall the security deposit be substituted for the Rent payment due for the last month of the lease term or be deemed a limitation on Landlord's other rights or remedies. Landlord may commingle the security deposit with its general funds and shall not be required to pay interest on the security deposit. If Tenant fully performs every provision of this lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant or any assignee of Tenant's leasehold interest within sixty (60) days following expiration of the lease and surrender of the Premises by Tenant. In the event the Premises are sold or transferred, Landlord may transfer the security deposit to the purchaser or transferee and Landlord shall~~

~~be relieved of any further liability to Tenant regarding the security deposit.~~

10. Condition of Premises.

A. Upon Commencement of Lease.

Attached as Exhibit C is a list of items pertaining to the Premises requiring repair, all of which items individually are to cost more than Two Hundred Fifty Dollars (\$250.00) to repair. These items are to be repaired by Landlord to good operating condition prior to the Commencement Date.

The Tenant, by taking possession of the Premises, shall be deemed to have agreed that at such time the Premises are in satisfactory order, repair and condition. Tenant shall, at its sole cost and expense keep the Premises in good condition and repair, and in compliance with all building and fire codes and other applicable laws and regulations. Such repairs, maintenance and costs shall include but not be limited to the exterior and structural components of the building, roof, foundation, supporting members, floors, walls, ceilings, heating and air conditioning equipment, plumbing and electrical systems, windows, doors, the underground storage tank system, signs, sidewalks and parking areas. Except as set forth in this Section, Landlord shall have no duty, nor be responsible for any repairs, maintenance, capital improvements or other costs associated with the Premises whatsoever.

B. Upon Termination or Expiration of Lease.

Upon the expiration or termination of this Lease, Tenant will surrender the Premises to Landlord in as good a state, condition and repair as they were on the Commencement Date of this Lease, ordinary wear and tear excepted. Except as provided in the following sentences, all alterations, additions, erections or improvements in, on or under the Premises at the expiration of this Lease shall, at once become part of the realty and belong to Landlord and shall, be surrendered with the Premises, unless Landlord elects to require Tenant, at Tenant's sole cost and expense to remove any such alterations, additions or improvements and to repair any damage to the Premises caused by such removal. Tenant may replace the existing dispensers with different dispensers. Upon the expiration or termination of this Lease, Tenant may remove and retain the replacement dispensers in which event Tenant shall return the original dispensers to the Premises in working order and good repair. Tenant shall not have the right to retain any dispensers which were installed by Landlord. The Premises shall be free and clear of any and all liens imposed by Tenant or Tenant's

creditors at the time of the expiration or other termination of the Lease.

11. Environmental Matters.

A. Existing Contamination.

Landlord and Tenant acknowledge that prior to the effective date of this Lease, a release of hydrocarbon contamination was reported with respect to Sites numbered 1869, 1878 and 1892 ("Existing Contamination"). Landlord has assumed the administrative responsibility for the remediation of such contamination and will restore each of the three Sites to an acceptable environmental condition. An acceptable environmental condition is reached with respect to a Site when a Site meets the Clean Standard as hereinafter defined.

1. A Site meets the Clean Standard upon the first date that both of the following conditions exist:

a. The Site has either (a) been deemed by the appropriate governmental agency with jurisdiction to have no further remediation, monitoring or disposal action required or (b) been deemed, in the written opinion of Landlord's consultant, as described below, to have no further cleanup, remediation, monitoring or disposal requirements imposed by any governmental authority with jurisdiction which arise from or are related to the Existing Contamination (the "Requirements"). Tenant shall have a period of ten (10) days following receipt of Landlord's consultant's opinion to review such opinion and to notify Landlord of any objections Tenant may have with respect to the opinion of Landlord's consultant. If Tenant notifies Landlord of any objections within such time period, the parties shall meet to discuss such objections. If Landlord and its consultant are unable to satisfy Tenant's objections, the parties shall select a mutually acceptable environmental consultant who is experienced in the type(s) of remediation which have occurred at the Site (the "Second Consultant") to review both the remediation work performed at the Site and the opinion of Landlord's consultant with respect thereto. The Second Consultant shall provide the parties with either (a) a written concurrence with the opinion of Landlord's consultant or (b) a written determination that Landlord must perform specific additional remediation work, which Second Consultant

shall describe in detail, in order for the Site to meet the Requirements. The determination of the Second Consultant shall be binding upon the parties. Upon Landlord's completion of the remediation work described in Second Consultant's determination, the Site shall be deemed to have met the Requirements. The option described in (b) in this subsection shall only apply in the event that the appropriate governmental agency with jurisdiction does not, as a matter of practice, provide written statements to the effect that property has no further remediation, monitoring or disposal action requirements when there has been substantial compliance with such agency's requirements. For purposes of this Agreement, monitoring requirements will be considered to be associated with a cleanup for a period of one (1) year after actual cleanup work is completed, but if monitoring is required beyond this one (1) year period, it will not be considered associated with the cleanup.

- b. No third party claims have been made or asserted which arise or are related to Existing Contamination at the Site.

This two-part test shall be referred to as the "Clean Standard."

- 1. Landlord shall be responsible for engaging or contracting through an environmental consultant or otherwise, the cleanup, remediation, monitoring and disposal work.
- 2. Tenant hereby grants Landlord an easement to access the Sites for purposes of doing the work described in this Section. In performing the work, Landlord shall keep the areas of the Site affected by the work in a safe and well maintained condition, shall keep such areas free from debris and shall use reasonable efforts to avoid disruption to Tenant's operations on the Site. Upon completion of the work, Landlord shall restore the affected areas to their previous conditions.
- 3. Landlord shall be responsible for the satisfaction of all third-party liabilities necessary to achieve the Clean Standard. Landlord shall also be responsible for (i) the payment of any tank fund deductibles, including any increases that may occur during the course of this Agreement in such tank fund deductibles; (ii) for any remediation costs which are not reimbursed or which are

not reimbursable by the tank fund; and (iii) for any costs for government ordered remediation which exceed the maximum amount of compensation allowed either on an annual or an aggregate basis by such tank fund with respect to Existing Contamination.

B. **Tenant's Duties.**

1. Tenant and its agents and employees shall conduct any operations on all Sites in compliance with all applicable federal, state and local environmental statutes, regulations, ordinances and any permits, licenses, approvals or judicial or administrative orders issued thereunder. All licenses, permits, registration forms, fees and proof of financial responsibility required for Tenant's operations on the Sites shall be the sole responsibility of the Tenant. Copies of all filings shall be supplied to Landlord.
2. Tenant covenants that:
 - a. No Hazardous Substances, as defined below, shall be generated, treated, stored or disposed, released or deposited in or on the Sites, including without limitation, into the surface and subsurface waters of and drain or sewer system serving the Site, except for those materials listed on Exhibit D which are used or generated in Tenant's Permitted Use of the Sites. The Exhibit D Hazardous Substances shall be stored, transported and ultimately disposed of at an authorized site in accordance with all applicable laws, rules and regulations and shall in no event be disposed, released or deposited in or on all Sites.
 - b. No activity shall be undertaken on the Sites which would cause:
 - (i) any Site to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise cause the Tenant or the Landlord to be in violation of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., or any similar state law or local ordinance;
 - (ii) a release or threatened release from any source on any Site of Hazardous Substances within the meaning of, or which would otherwise cause a Site to be in violation of, the Comprehensive Environmental Response Compensation and

Liability Act, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq., or any similar state law or local ordinance; or

(iii) the discharge of pollutants or effluents into any surface or subsurface water or drain or sewer system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. Section 1251 et seq. or the Clean Air Act ("CAA"), 42 U.S.C. Section 7410 et seq., or any similar state law or local ordinance;

- c. There shall be no substances or conditions permitted in or on any Site which may support an administrative or judicial citation, notice of violation, order, claim or cause of action under RCRA, CERCLA, any other federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirements or under any common law claim relating to environmental matters, or which could result in recovery by any governmental or private party of remedial or removal costs, natural resources damages, property damages, damages for personal injuries or other costs, expenses or damages, or which could result in injunctive relief arising from any alleged injury or threat of injury to health, safety or the environment; and
- d. there shall be no release(s) or threatened release(s) of Hazardous Substances from the underground storage tanks located on the Sites, if any.
3. For purposes of this Lease, "Hazardous Substances" shall mean any and all hazardous or toxic substances, hazardous constituents, contaminants, wastes, pollutants or petroleum, including, without limitation, crude oil or any fraction thereof, and hazardous or toxic substances, pollutants and/or contaminants as such terms are defined in CERCLA or RCRA; asbestos or material containing asbestos; and polychlorinated biphenyls (PCB); PCB articles or PCB containers.
4. Tenant shall provide Landlord with copies of its current underground storage tank registrations on all Sites on a annual basis.

5. Tenant shall notify Landlord of its method of release detection from the UST Systems and shall report the results from such methodology to Landlord annually with respect to all Sites.
6. Tenant shall be responsible for any waste generated as a result of Tenant's construction activities on the Sites. Expenses associated with the removal of such waste shall be paid by Tenant.
7. Tenant shall be responsible for and shall assume all liability from exposure to contamination by Tenant's employees, servants, agents, invitees or contractors.
8. Within ten (10) days following the Commencement Date, Tenant will test the underground storage tanks and lines. Copies of all test results and reports will be promptly forwarded to Landlord. Landlord shall reimburse Tenant for one-half of the standard costs for such work.
9. Tenant shall perform all upgrades or replacement work required by applicable laws, rules and regulations with respect to the UST Systems on the Sites at its sole cost and expense.
10. The expiration of this Lease, or earlier termination or cancellation, Tenant shall do tank and line testing and environmental testing of a mutually agreed scope and shall provide copies to Landlord. In the event that the test results indicate hydrocarbon or other contamination which is in excess of the then existing applicable requirements imposed by any governmental authority with jurisdiction, then Tenant shall take such action as is required with respect to such contamination as described in Exhibit E.

C. **Maintenance of Tank Fund Eligibility.**

If, following Closing, Tenant fails through its actions or inactions to maintain the eligibility of a Site under the state underground storage tank fund, then

1. Landlord shall have no further responsibility to Tenant with respect to the remediation of the Existing Contamination at the Site for which eligibility has not been maintained by Tenant;
2. Any indemnity obligation of Landlord to perform the work with respect to Existing Contamination at the Site shall end; and

3. Tenant shall thereafter perform the remediation work with respect to Existing Contamination at the Site and indemnify and hold Landlord harmless from and against all claims, expenses (including reasonable attorneys' fees), loss and liability arising from Existing Contamination at the Site.

D. Subsequent Releases.

1. Distinct Release.

If, following Closing, a material spill, leak or other release of hydrocarbons or other contamination occurs at any of the three Sites for which a release has been reported prior to a particular Site meeting the Clean Standard ("Post-Closing Contamination") and such release is unrelated to Landlord's remediation activity and is not due to any negligence or other wrongful conduct by Landlord in conducting such remediation activity and the hydrocarbons or other contamination attributable to such release can be segregated from Existing Contamination, then

- a. Tenant shall indemnify and hold Landlord harmless from and against that portion of all claims, expenses (including reasonable attorney's fees) loss and liability to third parties arising from a leak, spill or release of hydrocarbons or other hazardous substances on the Site caused by Tenant's operations conducted on the Site after Closing ("Post-Closing Contamination"). Tenant shall be solely responsible for the cost of that portion of the cleanup, remediation, monitoring and disposal work, and for the satisfaction of that portion of all third-party liabilities, attributable to such Post-Closing Contamination. Tenant shall also be responsible for any costs for government ordered remediation which exceed the maximum compensation allowed by the state tank fund with respect to Post-Closing Contamination.

- b. Landlord shall continue to be responsible for meeting the Clean Standard for the Site with respect to the Existing Contamination as provided in Section 11. A.1 above.

2. Commingled Contamination.

- a. If after Closing, Landlord reasonably determines during the performance of the cleanup work that levels of contaminants present at any of the three Sites for which a release has been reported exceeds the level of

such contaminants reflected in the groundwater and soil at a particular Site on the Commencement Date in an amount which would significantly increase the cost of the cleanup operations required, and reasonably suspects that such increased levels occurred as a result of contamination occurring on the Site after Commencement of the Lease ("Post-Closing Contamination"), it shall so notify Tenant.

- b. Within twenty-four (24) hours after the receipt of notice of such contamination (the "Contamination Notice") or such other reasonable time as shall be agreed to by the parties in writing, Tenant and Landlord shall confer as to and shall take such steps as are necessary to determine the following:
 - (i) Whether or not the increase in the level of contaminants is the result of Existing Contamination or Post-Closing Contamination, and
 - (ii) If the source of the increase in the level of contaminants is the result of a Post-Closing Contamination:
 - (a) the action to take to cleanup the Post-Closing Contamination,
 - (b) the cost of cleanup work for the Post-Closing Contamination, and
 - (c) whether the Post-Closing Contamination has or will migrate off the Site before such recommended cleanup work can remediate such contamination and if so the percentage of all injury or damage caused or to be caused to any adjoining property, if any, attributable to such Post-Closing Contamination.
 - (d) The percentage of the total estimated costs of the cleanup of the Site attributable to Existing Contamination and the percentage attributable to Post-Closing Contamination.
- c. If the parties are unable to reach agreement as to all items listed in Section 11 D.2.b above within thirty (30) days from receipt of

the Contamination Notice, then the parties shall hire an environmental consultant mutually agreeable to both parties and experienced in managing and remediating the type of contamination found at the Site. Such consultant shall review the applicable facts, conduct such tests as it deems reasonably necessary, and prepare and submit a written report addressing each of the issues listed in Section 11 D.2.b above. The costs of hiring such environmental consultant shall be borne one-half by each party. If either party does not agree with the findings provided in such environmental consultant's report, such party shall provide the other party written notice of such fact within ten (10) days from receipt of such report. If either party timely provides such notice, such party shall, at its sole cost and expense, hire a separate environmental consultant of like qualification to independently review the applicable facts, perform necessary tests, and provide to each party and the first environmental consultant a written report addressing such said Section 11 D.2.b issue. If within thirty (30) days from receipt of the report from the second environmental consultant, Tenant and Landlord, after consultation with both consultants, are not able to reach mutual agreement as to each issue of Section 11 D.2.b, Tenant and Landlord shall promptly proceed to submit the issue to arbitration in accordance with the rules and procedures of the American Arbitration Association. Such arbitration shall be performed by single arbitrator. The decision of said arbitrator shall be final and binding upon the parties. The cost of said arbitration shall be borne one-half by each party.

- d. If the total amount of costs attributable to Post-Closing contamination cleanup work as determined under Section 11 D.2.b above exceeds fifty percent (50%) of the total costs of the cleanup of the Site (whether or not reimbursed by the state tank fund), Landlord may request and Tenant will within thirty (30) days assume responsibility for all remaining cleanup work with respect to the Site. Tenant's assumption of responsibility for any such clean up work shall not relieve Landlord

of its obligation to pay its share of any clean up costs.

- e. The parties shall pay their respective percentages of the cost of cleanup and shall be reimbursed their proportionate share of payments received from the state tank fund.
- f. In the event of the Site having both Existing Contamination and Post-Closing Contamination, both parties agree to cooperate fully and to the maximum extent permitted by applicable rules and regulations in the joint pursuit of:
 - (i) insurance coverage for all costs incurred in the remediation work; and
 - (ii) coverage, to the greatest extent possible, under the state tank fund.

E. **UST System Upgrades and New Dispenser Installation.**
For work done by Tenant to upgrade the UST systems and lines and to install dispensers at any of the Sites, Landlord will be responsible for the costs associated with the excavation, removal, and disposal of any contaminated soil and water which may be excavated or removed as part of the work for the upgrade and the dispenser installation at a Site provided that the following requirements have been satisfied with respect to each Site for which Tenant desires Landlord to pay for such costs: Tenant has given Landlord notice of its intent to do the work and provided construction drawings and a schedule for the work satisfactory to Landlord; and the eligibility of the Site for reimbursement from the state underground storage tank fund is not lost or jeopardized as a result of the work done by Tenant.

F. **Covenant Not to Sue.**
Tenant agrees that it shall not pursue Landlord on any environmental claims Tenant may have against Landlord as a result of leasing a Site so long as Landlord is not in default under the terms and conditions of this Section 11. In the event Tenant provides written notice to Landlord of a material breach of this Section 11, and Landlord fails or refuses to cure such breach or commence the cure of such breach within thirty (30) days thereafter, this Covenant Not to Sue shall be deemed null, void and of no effect and Tenant shall be entitled to pursue such remedies as are permitted by law. When a Site has met the Clean Standard, the parties acknowledge that there can be no default by Landlord with respect to such Site under the terms of this Section 11 and Tenant's

covenant not to sue Landlord shall remain in full force and effect.

12. Indemnification.

Tenant shall defend, indemnify and hold Landlord, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them harmless from and against, any claims, including third party claims, damages, liabilities, costs or expense (including reasonable attorneys' fees) suffered or incurred by any of them, (i) arising out of or incident to the use of the Premises by Tenant, its customers, invitees, licensees, contractors, agents or employees or any act or omission of any of them in, on or relating to the Premises or the conduct of Tenant's business therein or thereon; (ii) that otherwise result from or are caused by any event or occurrence in, on or about the Premises during the term of the Lease (unless such event or occurrence is caused by the act or omission of Landlord); or (iii) arising from any breach or default on Tenant's part in the observance or performance of any covenant or obligation set forth in this Lease. Without limiting the generality of the foregoing, Tenant shall defend, indemnify and hold harmless Landlord, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them against any claims, including third party claims, damages, liability, cost or expense arising out of contamination occurring on the Premises during the term of this Lease (unless such contamination is caused by the act or omission of Landlord).

Landlord shall save, defend, indemnify and hold Tenant, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them harmless from and against, any claims, including third party claims, damages, liabilities, costs or expense (including reasonable attorneys' fees) suffered or incurred by any of them arising out of or incident to the use of the Premises by Landlord, its customers, invitees, licensees, contractors, agents or employees or any act or omission of any of them in, on or relating to the Premises or the conduct of Landlord's business therein or thereon. Without limiting the generality of the foregoing, Landlord shall defend, indemnify and hold harmless Tenant, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them against any claims, including third party claims, damages, liability, cost or expense arising out of contamination existing on the Premises prior to the Commencement Date of this Lease (unless such contamination is caused by the act or omission of Tenant).

Tenant shall assume no liability or responsibility for contamination existing on the Premises prior to the Commencement Date of this Lease. Tenant shall be responsible for and shall indemnify Landlord, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of

them against any claims, obligations or liability resulting from the use or presence of, or any release or discharge of any hazardous or toxic substance or waste or other violation of any environmental laws or regulations which occurs in, on, or emanates from the Premises during the term of the Lease.

If a party seeking indemnification under the foregoing provisions (the "Indemnified Party") becomes aware of a claim for which the Indemnified Party may be entitled to indemnify, it shall give prompt notice thereof to the other party (the "Indemnitor") and shall provide all information and documents available to the Indemnified Party relevant to such claim. Within thirty (30) days after receipt of such notice, the Indemnitor shall notify the Indemnified Party whether the Indemnitor agrees that the claim is covered by the indemnity, or whether the Indemnitor contends that the claim is not covered by the indemnity. If the Indemnitor has agreed that the claim is covered by the indemnity, the Indemnitor shall have the right to defend the claim at its own expense and to compromise, settle or otherwise dispose of such claim as the Indemnitor sees fit. If the Indemnitor has contended that the claim is not covered by the indemnity, or has failed to respond to the notice, then the Indemnified Party may defend the claim and may enter into any reasonable settlement thereof and later assert its rights against the Indemnitor. The indemnities herein are in addition to other remedies available to the parties.

13. Tenant Repairs and Alterations.

- A. Tenant shall not make any alterations, additions or improvements to the Premises which have a cost to Tenant greater than Fifty Thousand Dollars (\$50,000.00), or change any plumbing or wiring without the prior written consent of Landlord. Plans and specifications for such work shall be submitted to and approved in writing by Landlord prior to commencement of any such work. Landlord shall have the right to approve Tenant's selection of contractors as well as the general manner and method in which such work is to be performed. Prior to commencement of any work, Tenant shall provide Landlord with insurance certificates evidencing that all contractors and subcontractors have workmen's compensation insurance, and builder's risk insurance in amounts and with coverages satisfactory to Landlord. Any such improvements, including wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to Landlord and shall be surrendered with the Premises, unless Landlord elects to require Tenant, at Tenant's sole cost and expense, to remove any such alterations, additions or improvements and to repair any damage to the Premises caused by such removal.

B. Tenant shall pay or cause to be paid all costs for work done by or caused to be done on behalf of Tenant on the Premises of a character which may result in liens against Landlord's interest in the Premises, and Tenant will keep the same free and clear of all mechanic's liens and other liens on account of work done for or on behalf of Tenant or persons claiming under Tenant. Tenant hereby agrees to indemnify, defend and save Landlord harmless from all liability, loss, damages, costs or expenses, including attorney's fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials or supplies furnished to Tenant, including lien claims of laborer, materialmen or others. Should any such liens be filed or recorded against the Premises with respect to work done for or materials supplied to or on behalf of Tenant or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within twenty (20) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security. If Tenant shall be delinquent in paying any charge for which such a mechanic's lien or suit to foreclose such a lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but shall not be required to) pay such lien or claim and costs associated therewith, and the amount so paid, together with interest at the rate of 15% per annum and reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord.

14. Insurance.

- A. Tenant shall procure and maintain at its own expense at all times during the Lease Term, All Risk property insurance on Tenant's property and contents in an amount not less than full replacement cost. The term "full replacement cost" shall mean the actual replacement cost without deduction for physical depreciation, subject to an annual review of increases of insurance coverage. Landlord shall be named as an additional insured and Tenant shall furnish to Landlord certificates evidencing the existence and continuation in force of such policies.
- B. If Tenant is engaged in automotive service and repair work, Tenant shall procure and maintain at its own expense at all times during the Lease Term, Garage Hazard insurance and Garagekeepers Legal Liability insurance with limits of not less than \$1,000,000 per occurrence, combined single limit for bodily injury and property damage. Said insurance shall name Landlord as an

additional insured and shall be primary to any insurance maintained by Landlord.

- C. If Tenant is engaged in other than automotive service and repair work, Tenant shall procure and maintain at its own expense at all times during the Lease Term, Comprehensive General Liability insurance (occurrence form policy) with limits not less than \$1,000,000 per occurrence combined single limits for bodily injury and property damage. Such coverage shall include Contractual Liability, Personal Injury, Broad Form Property Damage, Fire Legal Liability, Products Liability, and Completed Operations Liability. Said insurance shall name Landlord as an additional insured and shall be primary to any insurance maintained by Landlord.
- D. All insurance required of Tenant under this Section 14 shall be procured from a responsible insurance company authorized to do business in Nebraska and rated no lower than "A" by A. M. Best Company, and shall be otherwise satisfactory to Landlord. Tenant shall provide Landlord with certificate(s) of such insurance upon commencement of the Lease Term and at such other times as may be requested by Landlord, and a binder indicating the renewal of Tenant's insurance at least thirty (30) days prior to any renewal date thereof. The certificates shall indicate that (i) Tenant's property insurance contains the waiver of subrogation required by Section 15, (ii) Tenant's liability coverages name Landlord as an additional insured and (iii) none of Tenant's insurance coverages may be cancelled or altered except upon thirty (30) days prior written notice to Landlord. The limits of Tenant's insurance shall not, under any circumstances, limit the liability of Tenant as otherwise provided in this Lease.

15. Waiver of Subrogation.

Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss or damage to property insured by fire, extended coverage, or any other property insurance policies. Landlord and Tenant shall obtain waiver of subrogation endorsements as part of the property insurance policies procured pursuant to Section 14(a) above.

16. Limited Liability.

Landlord shall not be liable for and no constructive eviction shall result from any loss or damage resulting from: (a) fire, explosion, falling plaster, steam, gas, electricity, water or rain involving any failure of the electrical wiring, pipes, plumbing systems or appliances, the roof, street or subsurface; (b) any variation or interruption of utilities or other services; (c) theft

or other criminal acts of third parties; or (d) any other cause whatsoever, unless due to the gross negligence of Landlord.

17. Assignment, Subletting and Mortgaging.

- a. Tenant shall not assign this Lease or sublet all or any part of the Premises without the prior written consent of Landlord, which may be granted or withheld by Landlord for any reason in its sole discretion. Landlord's consent to any requested assignment or subletting shall not relieve Tenant of its obligations hereunder and shall not be construed as a novation of this Lease.
- b. All subleases or assignments shall be in writing and a copy thereof provided to Landlord within ten (10) days prior to their effective dates. All subleases shall further contain an express provision that in the event of any default by Tenant under this Lease and upon notice thereof to the subtenant from Landlord, all rent payable by the subtenant shall be paid directly to Landlord for the Tenant's account until subsequent notice from Landlord that such default has been cured. Notwithstanding the foregoing, receipt by Landlord of rent directly from the subtenant shall not be considered a waiver of the default on the part of Tenant, nor an acceptance of such subtenant.
- c. Tenant shall not create or suffer to be created any mortgage, security interest or other lien or encumbrance against the Premises or any improvements or additions thereon, or against any equipment or fixtures installed by Tenant therein (other than Tenant's removable personal property or trade fixtures), and should any such mortgage, security interest, lien or encumbrance be created in breach of the foregoing, Landlord shall be entitled to discharge the same, and any amount expended by Landlord to discharge the same shall be considered additional rent hereunder and shall be payable by Tenant upon demand from Landlord.

18. Damage By Casualty.

Unless the parties otherwise agree in writing as to a revision of all or any part of the following provisions pertaining to the restoration, repair and rebuilding of the Premises or any portion thereof in the event of a casualty; the payee of insurance proceeds; the allocation of any excess proceeds; and/or any abatement or reduction or termination of Tenant's obligation to pay rent, the provisions of this paragraph 18 shall apply. In the event the Premises or any portion thereof is damaged in whole or in part by fire or other casualty during the term of this Lease, Tenant is obligated to restore, repair and rebuild such damaged area and property. Any and all insurance proceeds shall be applied to such restoration, repairs or rebuilding. To the extent that all

insurance proceeds are not required for such restoration, repairs or rebuilding, then said excess of insurance proceeds shall be equally divided between Landlord and Tenant. Notwithstanding anything contained herein to the contrary, Tenant's obligation to continue to make payments of rent or otherwise shall not be abated, reduced or terminated as a result of such casualty.

19. Eminent Domain and Condemnation.

If the whole or any portion of the Premises is taken by any public authority under the power of eminent domain or similar power, Landlord shall receive the entire award or price which is paid by the public authority. The rent payable by Tenant shall be reduced in just proportion to the nature, value and extent which the part of the Premises being taken bears to the entire Premises as agreed to by the parties. In addition, under these circumstances, Landlord shall pay for the repair of that part of the Premises which was not taken and which requires repair as a result of the taking. In the event of a partial condemnation, the Sublease pertaining to the particular Site which is being taken may be terminated by Landlord, in Landlord's sole discretion, in which event all obligation of Tenant to pay rent for the particular Site will be terminated effective the date on which Landlord gives notice of its exercise of its option to terminate.

20. Termination.

If there is filed by or against Tenant in any Court pursuant to any United States or state statute, a Petition in Bankruptcy or Insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and within thirty (30) days thereof Tenant fails to secure a discharge thereof, or if Tenant makes an assignment for the benefit of creditors or petitions for or enters into an arrangement therewith, this Lease, at the option of Landlord which shall be exercised within a reasonable time after notice of the happening of any one or more of such events, may be cancelled and terminated and in which event neither Tenant, nor any person claiming through or under Tenant by virtue of any statute or order of any court, shall be entitled to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies Landlord has by virtue of any statute or rule of law, may retain any rent, security deposit or monies received by it from Tenant or others on behalf of Tenant.

21. Marginal Sites.

If Tenant determines in good faith that it is not able to profitably operate any Site for a period of six (6) consecutive months, Tenant shall give Landlord notice thereof together with evidence demonstrating the inability of the Site to be profitably operated. If such evidence is reasonably satisfactory to Landlord, the Site shall be designated a Marginal Site. Landlord shall then have thirty (30) days to give Tenant notice whether or not Landlord will terminate the Sublease with respect to the Marginal Site. If

Landlord elects to terminate, Tenant's obligation to pay rent for the site will terminate thirty (30) days after the date notice was given to Landlord, and Landlord will be responsible for any requirements governing the removal of the UST System on the Site. If Landlord elects not to terminate the Sublease with respect to the Marginal Site, Tenant's obligation to pay rent for the Site will continue but Landlord shall be responsible for any requirements for removal of the UST System on the Site. Except as provided in this paragraph and irrespective of Landlord's decision whether or not to terminate the Sublease with respect to a Marginal Site, Tenant shall remain responsible for its obligations pursuant to Paragraph 11.B.

22. Entry By Landlord.

- A. Landlord and its agents shall have the right to enter the Premises at any time for the purpose of examining inspecting the Premises.
- B. Landlord may enter the Premises at all reasonable times to show the same to prospective purchasers or tenants of the Premises. If Tenant shall not be personally present to open and permit entry into the Premises, Landlord may enter by means of a master key without any liability to Tenant, except for any failure to exercise due care with regard to Tenant's property.
- C. If during the last month of the Lease Term, Tenant shall have removed substantially all of its property from the Premises, Landlord may immediately enter and alter, renovate, and redecorate the Premises without termination or abatement of Rent; provided, however, that Landlord shall pay Tenant for the fair market value of any damage done by Landlord to Tenant's property remaining on the Premises during the last month of the Lease Term.

23. Other Income.

To the extent that Landlord receives income from pay telephones and ATMs located on the Premises, this income shall be paid to Tenant. Landlord has no knowledge of the receipt of any such income and shall have no obligation to Tenant to collect any such income paid to the owner of the Premises or to otherwise undertake any action against the owner of the Premises for the benefit of Tenant to collect any such income.

24. Default By Tenant.

- A. The following events (herein referred to as an "Event of Default") shall constitute a default by Tenant hereunder:
 - 1. Tenant shall default in the due and punctual payment of Rent or any other amounts payable hereunder, and such default shall continue for five (5) days after written notice thereof by Landlord

to Tenant, unless otherwise specifically provided herein.

2. Tenant shall vacate or abandon the Premises.
 3. If this Lease or the estate of Tenant hereunder shall be transferred to or shall pass to or devolve upon any other person or party except in the manner herein provided.
 4. This Lease of the Premises, or any part thereof, shall be taken upon execution or by any other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and said attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof.
 5. Occurrences causing termination of this Lease as provided in Section 20.
 6. Tenant shall fail to take possession of the Premises on the Commencement Date of this Lease.
 7. Tenant shall fail to be open for business for at least eight (8) hours per day for more than eight (8) days in any thirty (30) day period.
 8. Tenant shall fail to perform any of the other agreements, terms, covenants or conditions herein on Tenant's part to be performed, and such nonperformance shall continue for a period of ten (10) days after written notice thereof by Landlord to Tenant.
- B. Upon the occurrence of an Event of Default, Landlord may at any time thereafter, in its sole discretion, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Event of Default, elect to pursue one or more of the following remedies:
1. Re-enter and take possession of the Premises without prejudice to any remedies for arrears of Rent or other sums due. Should Landlord elect to reenter the Premises as provided in this subsection 1. or take possession pursuant to legal proceedings, Landlord may, without terminating this Lease, relet the Premises or any part hereof in Landlord's or Tenant's name, but for the account of Tenant, upon such term or terms (which may include concessions of free rent and tenant finish) as

Landlord determines to be necessary. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant.

2. In the event that Landlord relets the Premises, or a portion thereof, Tenant shall pay to Landlord:
(a) the Rent and other sums as herein provided, which would be payable hereunder if such repossession had not occurred, less (b) the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting.
3. In the event this Lease is terminated, Tenant shall remain liable to Landlord for damages in an amount equal to the Rent and other sums arising under this Lease for the balance of the Lease Term as if this Lease had not been terminated, less the net proceeds, if any, from any subsequent reletting, after deducting all expenses associated therewith. Tenant shall pay such amounts to Landlord monthly on the days on which such sums would have otherwise been payable.

25. Subordination and Attornment.

- A. This Lease is subordinate to any mortgage or deed of trust now or hereafter placed on the Premises and to any renewal, modification, consolidation, replacement or extension of such mortgage or deed of trust and the addition of any other mortgage or deed of trust granted after the date of execution of this Lease. This clause shall be self-operative, and no further instrument of subordination shall be required. Within five (5) days after written request by Landlord, Tenant shall execute any documents which may be desirable to or required of Landlord to confirm the subordination of this Lease. Landlord is hereby irrevocably appointed agent for and attorney-in-fact of Tenant to execute all such subordination instruments in the event Tenant fails to execute said instrument within five (5) days after notice from Landlord demanding the execution thereof. At the request of Tenant, Landlord shall request a nondisturbance agreement from the lender, although Landlord makes no representation or guaranty that such nondisturbance agreement can be obtained.
- B. Tenant agrees in the event of a sale, transfer, or assignment of the Landlord's interest in the Premises or any part thereof, to attorn to and to recognize such

sale, transfer or assignment and such purchaser, transferee or assignee as Landlord under this Lease.

26. Estoppel Certificate.

Tenant shall, within ten (10) days after a written request from Landlord, execute, acknowledge and deliver to Landlord a statement, in writing, certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which rental and other charges are paid in advance, if any, and acknowledging that there are not, to Tenant's knowledge, any defaults on the part of Landlord hereunder, or specifying such defaults, if any are claimed. It is expressly understood and agreed that any such statements may be relied upon by a prospective purchaser, transferee or encumbrancer of all or any portion of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification, except as may be represented by Landlord, and that Landlord is not in default in the performance of its obligations and that no more than one (1) month's rental has been paid in advance.

27. Abandonment.

Tenant shall not vacate or abandon the Premises at any time during the Lease Term, and if Tenant shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned. All such abandoned property may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person, and without obligation to account therefore; and Tenant shall pay Landlord all expenses incurred in connection with the disposition of such property.

28. Brokers.

Tenant hereby agrees to indemnify and hold Landlord harmless from any and all losses, costs, damages or expenses by reason of any claim of or liability to any broker or person claiming through Tenant and arising out of or in connection with the negotiation, execution and delivery of this Lease or any extension or modification thereof. Tenant hereby indemnifies Landlord against, and Tenant shall be liable for the payment of, all reasonable attorneys' fees, costs and expenses incurred by Landlord in defending against any such claim and in the event any Claimant shall be successful in an action to secure payment of a commission, Tenant shall, upon demand, make payment to such Claimant.

29. Quiet Possession.

Landlord covenants that it has full right and power to execute and perform this Lease and that it will put Tenant into complete

and exclusive possession of the Premises. Landlord further covenants that Tenant, upon paying the rents set forth herein and performing the covenants and agreements hereof shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements and privileges thereto belonging during the term hereof.

30. Notice.

All notices shall be in writing, and deemed effective when delivered personally, deposited in the U.S. Mail, postage prepaid, certified or registered, return receipt requested, or delivered by overnight delivery service to Landlord or to Tenant as set forth below or to such other place as either party may designate from time to time by written notice.

To Landlord at: Total Petroleum, Inc.
 900 19th Street,
 TOTAL Tower, Suite 2201
 Denver, Colorado 80202
 Attn: Real Estate Department

To Tenant at: The Benson Corporation
 200 Essex Court
 Omaha, Nebraska 68114 •
 Attn: Thomas N. Campbell, President

31. General Provisions.

- A. The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver in any subsequent matter. The acceptance of monies from Tenant shall not be deemed to be a waiver of any default by Tenant.
- B. The headings to the sections of this Lease shall have no effect upon the construction or interpretation of any part hereof.
- C. Time is of the essence in this Lease.
- D. The covenants and conditions herein contained bind the heirs, successors, executors, administrators, and assigns of the parties hereto.
- E. Neither Landlord nor Tenant shall record this Lease, but Tenant shall execute, at the request of Landlord, a short form memorandum hereof which may be recorded at the election of Landlord.
- F. Upon Tenant paying all sums required hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have

quiet possession of the Premises for the entire Lease Term, subject to all the provisions of this Lease.

- G. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws and resolutions of said corporation, and that this Lease is binding upon said corporation. If Tenant is a partnership, each individual executing this Lease on behalf of such partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the partnership, and that this Lease is binding on the partnership.
- H. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.
- I. This Lease shall be governed by the laws of the state of Nebraska.
- J. In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover court costs and attorneys' fees from the other party. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorneys' fees and court costs reasonably incurred by Landlord.
- K. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned herein, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.
- L. This Lease and the obligations of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor disputes, acts of God, or any other cause beyond the reasonable control of the Landlord.
- M. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way effect, impair, or invalidate any other provision hereof and

such other provision shall remain in full force and effect.

- N. Tenant shall provide its most recent financial statement to Landlord within fifteen (15) days of the Landlord's request therefor.
- O. The submission or delivery of this document for examination and review does not constitute an option, an offer to lease space in the Premises or an agreement to lease. This document shall have no binding effect on the parties unless and until executed by both Landlord and Tenant.
- P. All exhibits and attachments referenced in this Lease are incorporated in and made a part of this Lease as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

TOTAL PETROLEUM, INC.

By: 

C. Gary Jones
Senior Vice President, Marketing

TENANT:

THE BENSON ^{COLLECTION} ~~GROUP~~

By: 

Thomas N. Campbell
Title: President

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____
day of _____, 1994, by _____
as _____
of Total Petroleum, Inc.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public

STATE OF Oklahoma)
) ss.
COUNTY OF Tulsa)

The foregoing instrument was acknowledged before me this
7th day of February, 1994, by Thomas N. Campbell
the President of The Benson Corporation,
a Delaware corporation, on behalf of the
corporation.

Witness my hand and official seal.

My commission expires: 2/27/96

(SEAL)

Mary Kay Campbell
Notary Public

EXHIBIT A-1

LEGAL DESCRIPTIONS

Property #1869

The following is the legal description for that certain real estate situated in the City of Omaha, County of Douglas, State of Nebraska, to-wit:

Lots 5 and 6, in Block 4, in WEST LAWN PARK ADDITION, an Addition to the City of Omaha, as surveyed platted, and recorded, in Douglas County, Nebraska.

55-42700

Known and numbered as 6621 Center Street,
Omaha, Nebraska, 68106.

Property #1878

The following is the legal description for that certain real estate situated in the City of Omaha, County of Douglas, State of Nebraska, to-wit:

10-30940
That part of Lots 1, 2, 3, 4 and 5, in Block 14, in POPPLETON PARK ADDITION, an Addition to the City of Omaha, in Douglas County, Nebraska, described as follows: Beginning at the point of intersection of the Southerly R.O.W. line of the Omaha Beltline Railway; thence Easterly on the Southerly R.O.W. line of California Street on the following described courses; thence S 89° 01' 20" E (assumed bearing), 36.75 feet; thence S 00° 58' 40" W, 1.00 feet; thence S 74° 59' 37" E, 36.59 feet; thence S 61° 01' 01" E, 27.58 feet; thence S 86° 47' 36" E, 24.55 feet to a point on the West line of the Derby Refining Company property as recorded in Deed Book 1627 Page 316 in the Douglas County Register of Deeds; thence S 01° 47' 20" W on the West line of said Derby Refining Company property, 171.09 feet; thence N 89° 29' 00" W, 115.37 feet to a point on the East R.O.W. line of said Omaha Railway, 195.80 feet to the point of beginning.

Known and numbered as 530 North Saddle Creek Road, Omaha, Nebraska 68131.

Property #1892

The following is the legal description for that certain real estate situated in the City of Omaha, County of Douglas, State of Nebraska, to-wit:

35-15-12
01-6000
NW SW

A tract of land located in the Southwest Quarter of Section 35, Township 15 North, Range 12 East of the 6th P.M., in Douglas County, Nebraska, more particularly described as follows: Commencing at the West Quarter corner of said Section 35-15-12; thence South 00°05' West (assumed bearing) along the West line of the Southwest Quarter of said Section 35 a distance of 48 feet; thence South 81°08' East a distance of 97.5 feet; thence South 11°59' East a distance 112.4 feet along the Northeasterly right-of-way line of Interstate Highway No. 80 interchange to a point of curvature of a 3.1661° curve; thence along said 3.1661° curve (with the Northerly tangent bearing of South 08°52' West) to the left for a distance of 271.25 feet to a point of tangency; thence South 89°43' East, perpendicular to the tangent line of said 3.1661° curve a distance 37.00 feet to a point; thence North 00°17'00" East a distance of 81.87 feet to the point of beginning; thence continuing North 00°17'00" East a distance of 106.70 feet; thence South 81°11'15" East a distance of 119.18 feet; thence North 60°33'45" East a distance of 56.25 feet; thence North 08°48'45" East a distance of 42.00 feet to a point on the Southerly bank of the Big Papillion Creek, thence South 52°21'10" East along said Southerly bank of the Big Papillion Creek a distance of 46.64 feet; thence South 00°14'42" West a distance of 210.10 feet to the point of beginning;

EXCEPT

A tract of land located in part of the Southwest One-Quarter of Section 35, Township 15 North, Range 12 East of the 6th P.M., in Douglas County, Nebraska, described as follows: Commencing at the West One-Quarter corner of said Section 35; thence South 02°08'42" East (assumed bearing) along the West

line of said Southwest One-Quarter and along the centerline of 84th Street 255.14 feet; thence North $87^{\circ}51'18''$ East 135.85 feet; thence South $83^{\circ}30'20''$ East 119.18 feet; thence North $58^{\circ}13'02''$ East 23.16 feet to the point of beginning; thence continuing North $58^{\circ}13'02''$ East 33.09 feet; thence North $06^{\circ}23'37''$ East 41.99 feet to the Southerly bank of the Big Papillion Creek; thence South $54^{\circ}34'21''$ East along said Southerly bank 46.43 feet; thence South $02^{\circ}04'07''$ East 107.39 feet to a point on the proposed Southwesterly right-of-way line of said Big Papillion Creek; thence along said proposed Southwesterly right-of-way line on the following two described courses; (1) North $45^{\circ}58'32''$ West 51.34 feet; (2) thence North $43^{\circ}39'09''$ West 54.46 feet to the point of beginning.

Known and numbered as 3507 South 84th Street,
Omaha, Nebraska.

Property #1893

The following is the legal description for that certain real estate situated in the City of Omaha, County of Douglas, State of Nebraska, to-wit:

Lots 1, in Block 2, in THORNBURG PLACE, EXCEPT, the North five feet of the West five feet deeded to the City of Omaha, an addition to the City of Omaha, as surveyed, platted, and recorded, in Douglas County, Nebraska.

20 38 400

Known and numbered as 4103 Leavenworth Street,
Omaha, Nebraska 68105.

SUBLEASE AGREEMENT

TOTAL PETROLEUM, INC.

1. Parties.

This Sublease, dated this 7th day of FEBRUARY, 1994, is entered into between TOTAL PETROLEUM, INC., a Michigan corporation, as "Landlord," whose address is 900 19th Street, TOTAL Tower Suite 2201, Denver, Colorado 80202, and The Benson Corporation, a Delaware corporation, whose address is 200 Essex Court, Omaha, Nebraska 68114 as "Tenant", hereinafter referred to as the "Lease".

2. Premises.

In consideration of the performance of the terms, covenants and conditions hereinafter set forth, including the payment of Rent by Tenant, Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, the two (2) properties (referenced to individually as a "Site") legally described on Exhibit A-1 attached hereto (the "Premises"). The Premises shall include the underground storage tanks and piping appurtenant thereto which are located on the Premises (the "UST System") as well as those fixtures and items of personal property listed on attached Exhibit A-2.

3. Use.

- A. The Premises are to be used as a gasoline service station/convenience store and for no other purpose without the prior written consent of Landlord ("Permitted Use").
- B. In no event shall any use by Tenant be made or permitted to be made of the Premises, nor acts done, which are improper, immoral, unlawful or which have an objectionable purpose.
- C. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or government rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or

requirement, shall be conclusive of that fact as between Landlord and Tenant.

- D. Tenant shall not permit any employee, agent or invitee of the Tenant to violate any covenant or obligation of the Tenant hereunder.

4. **Underground Storage Tank Upgrades or Replacements.**

Landlord and Tenant acknowledge that Title 40 C.F.R. Part 280 requires all underground storage tank systems to either be upgraded to meet specific standards set forth in such regulations or replaced by December 22, 1998. Therefore, the UST Systems covered by this Lease must be upgraded or replaced by such date. Pursuant to Section 11 of this Lease, Tenant is required to maintain the Premises in accordance with all applicable laws and regulations.

In no event shall Tenant be entitled to a reduction in rent or to damages nor shall Tenant have any right of offset against the rent or any other sums due hereunder as a result of any temporary closure or interference with Tenant's operations on the Premises during the replacement or upgrade of the UST System by Tenant.

5. **Rent.**

Tenant covenants to pay to Landlord by electronic funds transfer on or before the first day of each month during the Lease Term, without offset, deduction, abatement, notice or demand, in U.S. Dollars, the following amounts: the rent for the Premises, exclusive of real estate taxes, assessments and operating expenses (the "Rent"), shall be as follows: Year 1 = Five Thousand Eight Hundred Dollars (\$5,800.00) per month to be allocated one half or Two Thousand Nine Hundred (\$2,900.00) per month per Site. Each year thereafter the rent shall be adjusted as follows:

- A. Rent - Consumer Price Index Adjustment. The annual adjustment shall be effective for the year for which the adjustment is made and for the following years until another adjustment is to be made or until the expiration of the Primary Term.

(1) In this paragraph:

- (a) "Base Year" means the first one (1) year period of the term of this Lease. If the Lease commences in the middle of the month, the following month is the first month of the one (1) year period of the Base Year.
- (b) "Price Index" means the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items, (1982-1984 = 100).

- (c) "Price Index for the Base Year" means the Price Index for the month preceding the first month of the Base Year.
 - (d) "Price Index for Adjustment" means the Price Index for the month preceding the month for which an adjustment is to be made.
 - (2) The annual adjustment will be based on the percentage difference between the Price Index Adjustment and the Price Index for the Base Year as follows:
 - (a) \$5,800.00 will be multiplied by the percentage or difference between the Price Index for Adjustment and the Price Index for the Base Year, and the product will be added to the \$5,800.00 effective as of the first month for which the adjustment is to be made.
- The adjustment is to be made only when the Price Index for Adjustment is greater than the Price Index for the Base Year.
- If the Price Index (or a successor or substitute index) is not available or is no longer applicable, a reliable governmental or other non-partisan publication evaluating the information used in determining the Price Index will be used.
- (3) The Tenants delay or failure of Tenant in computing the adjustment beyond the month for which the adjustment is to be effective will not impair the continuing obligation of Tenant to pay rent adjustments.
 - (4) The adjustment will be allocated one half per Site.

... The event the Commencement Date does not fall on the first day of the month, then the Rent for said month shall be prorated by dividing the Rent by the number of days in that month and multiplying the resulting quotient by the remaining days in that month (including the Commencement Date).

In the event the entire amount of Rent due for any month is not paid by the third day of said month, Tenant shall be charged a late charge equal to 5% of the total amount of Rent due for said month. Additionally, any amount of Rent past due or late charge assessed will accrue interest at the rate of 15% per annum until paid.

Payments received from Tenant shall be applied first to any charges or interest due to Landlord and the balance to Rent due.

- D. As provided in Section 5, the rent is to be paid by electronic funds transfer. Tenant is signing the attached Total Petroleum, Inc. Authorization Agreement for Funds Transfers at the time of executing this Lease. In the event Tenant desires to close the account indicated on the Authorization Agreement, it will notify Landlord prior to closing the account and sign an authorization agreement for funds transfer to another account so that Rent will continue to be paid by electronic funds transfer without disruption.

6. Term.

- A. The term of this Lease shall have a term of ten (10) years, and FIFTEEN (15) days and is referred to herein as the "Lease Term," and shall commence on February 14, 1994.
- B. Tenant shall have the option of renewing this sublease for a period commencing March 1, 2004, and terminating on June 7, 2013 (the "Renewal Term"). The Sublease shall automatically renew unless Tenant gives Landlord notice that it is not exercising its option for the Renewal Term on or before March 1, 2003.

Under the terms of its Lease of the Premises, Landlord has an option to renew such Lease for a period of ten (10) years. In the event that Landlord elects to renew such Lease, Tenant shall have the option of renewing this sublease for such ten-year (10) period (the "Second Renewal Term"). If Landlord elects to renew the term of its Lease, Landlord shall so notify Tenant not less than six (6) months prior to the expiration of the Renewal Term. Tenant shall have thirty (30) days within which to notify Landlord in writing of Tenant's election to renew this Lease.

The rent for the Renewal Term and the Second Renewal Term shall be as set forth in Exhibit B.

- C. This Lease shall terminate on the last day of February, 2004, or on the last day of the renewal terms if they come into existence in accordance with the preceding paragraph (the "Termination Date") without the necessity of any notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives notice to vacate or quit the Premises. If Tenant remains in possession of the Premises after the Termination Date, in the absence of any written agreement extending the Lease Term, the

tenancy under this Lease shall, at Landlord's option, either (a) become a month-to-month tenancy, terminable by either party on thirty (30) days prior written notice, at a monthly rental equal to 200% of the last Rent in effect under this Lease and shall be subject to all other conditions, provisions and obligations of this Lease; or (b) be deemed to have terminated as of the Termination Date. Tenant shall then be considered a trespasser subject to statutory eviction proceedings and shall be liable to Landlord for any and all damages suffered by Landlord as a result of Tenant holding over and failing to vacate the Premises on the Termination Date. Landlord shall notify Tenant, in writing, within ten (10) days after the Termination Date as to which option Landlord shall choose to exercise.

7. Net Lease.

- A. It is the intent and purpose of this Lease that Landlord not incur any cost or expense whatsoever in owning and leasing the Premises to Tenant including, but not limited to, any cost (including taxes) and expense of occupying, maintaining, repairing, improving, insuring and subletting the Premises. All of said costs shall be borne by Tenant. It is intended hereby that Landlord shall receive the rental payments hereunder absolutely and completely net to Landlord. Tenant agrees to promptly and completely pay for any item, cost or expense not expressly enumerated within this Lease that otherwise would be incurred by Landlord.
- B. This Sublease is subject and subordinate to the lease (the "Prime Lease") between Phillip G. Ruffin and Town & Country Food Markets, Inc., as landlord, and Total Petroleum, Inc., as tenant, a copy of which has been delivered to Tenant by Landlord simultaneously with the execution and delivery of the Sublease. Tenant agrees that it shall comply with all terms and conditions of the Prime Lease as though Tenant were the tenant thereunder, provided, however, that in the event of a conflict between an obligation created under the terms of the Prime Lease and the terms of this Sublease, the terms of this Sublease shall control.
- C. Tenant acknowledges that Tenant's obligation to pay any and all rent hereunder, to make all other rent payments required hereunder and to perform and observe all other obligations and agreements hereunder shall be absolute and unconditional and, except as specifically provided in other Sections of this Lease, neither this Lease nor any obligations or agreements shall terminate, nor shall Tenant be entitled to any abatement, reduction, set-off, counterclaim or other deduction with respect to any rent

or any other sum payable hereunder; nor shall the obligations of Tenant hereunder to pay rent be affected by any reason of any damage or destruction of the Premises; any taking of the Premises or any part thereof by condemnation or otherwise; any prohibition, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises or any interference with such use, occupancy or enjoyment by any person; any default by Landlord or Tenant hereunder or under any other agreement, or the impossibility or illegality of performance by Landlord, Tenant or both; any action of any governmental authority; or any other cause whether similar or dissimilar to the foregoing. It is the intention of the parties hereto that the rental payments and any of the sums payable hereunder shall be paid by Tenant as absolute obligations without diminution for any reason. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease. Tenant shall have the right, however, by separate and independent action, to pursue any claims it may have against Landlord.

- D. Tenant shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any assignee of Landlord or action with respect to this Lease which may be taken by any trustee, receiver, or liquidator or by any court. Except as otherwise provided in this Lease, Tenant waives all rights to terminate or surrender this Lease, or to abatement or deferment of rent or other sums payable hereunder.

8. Payment of Taxes.

In addition to the Rent payable pursuant to Section 5 above, Tenant shall also pay the following:

- A. Any and all real estate, personal property, and ad valorem taxes applicable to the Premises, including any and all special or general assessments for any and all periods of time that this Lease is in effect. Real estate taxes shall mean all general property taxes, real or personal, (excluding income taxes of Landlord) which may be levied during the term of this Lease. No general or special assessments may be deferred for payment beyond the term of this Lease. Said payments shall be made directly to the taxing authorities to the extent

possible. Taxes shall be prorated between the parties based on the Commencement Date of the Lease.

- B. In the event such taxes are eliminated or reduced by any federal, state or municipal body or governmental agency having jurisdiction thereof, and other taxes imposed by way of substitution for, or in addition thereto, all such taxes then substituted or additional tax (excluding income taxes of Landlord) shall be included as taxes to be paid by Tenant pursuant to this Lease.
- C. Said taxes shall be timely paid and copies of paid receipts shall be submitted to Landlord within thirty (30) days of receipt by Tenant of such paid receipts.
- D. Tenant shall take all action necessary to receive such notice of tax assessments and amounts due directly from the taxing authorities. Tenant shall have the right, but not obligation, to contest the taxes or amounts thereof with the proper taxing authority, but at no cost or expense to Landlord. If Tenant elects to so contest, it shall do so by appropriate proceedings diligently contested in good faith. Notwithstanding such proceedings, the contested taxes shall be promptly paid and discharged by Tenant, unless such proceedings (and where necessary the posting of an appropriate bond or other security) shall operate to prevent or stay the collection of the taxes and secure any accruing penalties or interest and to cure any default in the payment of taxes required under any mortgage upon the Premises. If Landlord is required to join in the proceedings, it shall do so provided Tenant shall pay all costs and expenses incurred by Landlord.
- E. Tenant shall promptly pay all costs associated with the occupancy, use, maintenance, repair, utilities and licenses.

~~9. Security Deposit.~~

~~Prior to the execution of this Lease, Tenant has deposited with Landlord a sum equal to one (1) month's Rent. Said sum shall be held by Landlord as additional security for the faithful performance by Tenant of all the terms of this Lease. If Tenant defaults with respect to any provisions of this Lease, Landlord may apply any part of this security deposit to the payment of any sum in default, accrued interest, late payment fees or for the payment of, or to compensate Landlord for, any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the security deposit is so applied, Tenant shall immediately deposit cash with Landlord to restore the security deposit to its original amount. In no event shall the security deposit be substituted for the Rent payment due for the last month of the~~

~~Lease Term or be deemed a limitation on Landlord's other rights or remedies. Landlord may commingle the security deposit with its general funds and shall not be required to pay interest on the security deposit. If Tenant fully performs every provision of this lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant or any assignee of Tenant's leasehold interest within sixty (60) days following expiration of the Lease and surrender of the Premises by Tenant. In the event the Premises are sold or transferred, Landlord may transfer the security deposit to the purchaser or transferee and Landlord shall be relieved of any further liability to Tenant regarding the security deposit.~~

10. Condition of Premises.

A. Upon Commencement of Lease.

Attached as Exhibit C is a list of items pertaining to the Premises requiring repair, all of which items individually are to cost more than Two Hundred Fifty Dollars (\$250.00) to repair. These items are to be repaired by Landlord to good operating condition prior to the Commencement Date.

The Tenant, by taking possession of the Premises, shall be deemed to have agreed that at such time the Premises are in satisfactory order, repair and condition. Tenant shall, at its sole cost and expense keep the Premises in good condition and repair, and in compliance with all building and fire codes and other applicable laws and regulations. Such repairs, maintenance and costs shall include but not be limited to the exterior and structural components of the building, roof, foundation, supporting members, floors, walls, ceilings, heating and air conditioning equipment, plumbing and electrical systems, windows, doors, the underground storage tank system, signs, sidewalks and parking areas. Except as set forth in this Section, Landlord shall have no duty, nor be responsible for any repairs, maintenance, capital improvements or other costs associated with the Premises whatsoever.

B. Upon Termination or Expiration of Lease.

Upon the expiration or termination of this Lease, Tenant will surrender the Premises to Landlord in as good a state, condition and repair as they were on the Commencement Date of this Lease, ordinary wear and tear excepted. Except as provided in the following sentences, all alterations, additions, erections or improvements in, on or under the Premises at the expiration of this Lease shall, at once become part of the realty and belong to Landlord and shall, be surrendered with the Premises, unless Landlord elects to require Tenant, at Tenant's sole cost and expense to remove any such alterations,

additions or improvements and to repair any damage to the Premises caused by such removal. Tenant may replace the existing dispensers with different dispensers. Upon the expiration or termination of this Lease, Tenant may remove and retain the replacement dispensers in which event Tenant shall return the original dispensers to the Premises in working order and good repair. Tenant shall not have the right to retain any dispensers which were installed by Landlord. The Premises shall be free and clear of any and all liens imposed by Tenant or Tenant's creditors at the time of the expiration or other termination of the Lease.

11. Environmental Matters.

A. Existing Contamination.

Landlord and Tenant acknowledge that prior to the effective date of this Lease, a release of hydrocarbon contamination was reported with respect to Site numbered 1881 ("Existing Contamination"). Landlord has assumed the administrative responsibility for the remediation of such contamination and will restore the Site to an acceptable environmental condition. An acceptable environmental condition is reached with respect to the Site when the Site meets the Clean Standard as hereinafter defined.

1. The Site meets the Clean Standard upon the first date that both of the following conditions exist:

a. The Site has either (a) been deemed by the appropriate governmental agency with jurisdiction to have no further remediation, monitoring or disposal action required or (b) been deemed, in the written opinion of Landlord's consultant, as described below, to have no further cleanup, remediation, monitoring or disposal requirements imposed by any governmental authority with jurisdiction which arise from or are related to the Existing Contamination (the "Requirements"). Tenant shall have a period of ten (10) days following receipt of Landlord's consultant's opinion to review such opinion and to notify Landlord of any objections Tenant may have with respect to the opinion of Landlord's consultant. If Tenant notifies Landlord of any objections within such time period, the parties shall meet to discuss such objections. If Landlord and its consultant are unable to satisfy Tenant's objections, the parties shall select a mutually acceptable environmental consultant who is experienced in the type(s)

of remediation which have occurred at the Site (the "Second Consultant") to review both the remediation work performed at the Site and the opinion of Landlord's consultant with respect thereto. The Second Consultant shall provide the parties with either (a) a written concurrence with the opinion of Landlord's consultant or (b) a written determination that Landlord must perform specific additional remediation work, which Second Consultant shall describe in detail, in order for the Site to meet the Requirements. The determination of the Second Consultant shall be binding upon the parties. Upon Landlord's completion of the remediation work described in Second Consultant's determination, the Site shall be deemed to have met the Requirements. The option described in (b) in this subsection shall only apply in the event that the appropriate governmental agency with jurisdiction does not, as a matter of practice, provide written statements to the effect that property has no further remediation, monitoring or disposal action requirements when there has been substantial compliance with such agency's requirements. For purposes of this Agreement, monitoring requirements will be considered to be associated with a cleanup for a period of one (1) year after actual cleanup work is completed, but if monitoring is required beyond this one (1) year period, it will not be considered associated with the cleanup.

- b. No third party claims have been made or asserted which arise or are related to Existing Contamination at the Site.

This two-part test shall be referred to as the "Clean Standard."

- 2. Landlord shall be responsible for engaging or contracting through an environmental consultant or otherwise, the cleanup, remediation, monitoring and disposal work.
- 3. Tenant hereby grants Landlord an easement to access the Sites for purposes of doing the work described in this Section. In performing the work, Landlord shall keep the areas of the Site affected by the work in a safe and well maintained condition, shall keep such areas free from debris and shall use reasonable efforts to avoid disruption to Tenant's operations on the Site. Upon

completion of the work, Landlord shall restore the affected areas to their previous conditions.

4. Landlord shall be responsible for the satisfaction of all third-party liabilities necessary to achieve the Clean Standard. Landlord shall also be responsible for (i) the payment of any tank fund deductibles, including any increases that may occur during the course of this Agreement in such tank fund deductibles; (ii) for any remediation costs which are not reimbursed or which are not reimbursable by the tank fund; and (iii) for any costs for government ordered remediation which exceed the maximum amount of compensation allowed either on an annual or an aggregate basis by such tank fund with respect to Existing Contamination.

B. Tenant's Duties.

1. Tenant and its agents and employees shall conduct any operations on all Sites in compliance with all applicable federal, state and local environmental statutes, regulations, ordinances and any permits, licenses, approvals or judicial or administrative orders issued thereunder. All licenses, permits, registration forms, fees and proof of financial responsibility required for Tenant's operations on the Sites shall be the sole responsibility of the Tenant. Copies of all filings shall be supplied to Landlord.
2. Tenant covenants that:
 - a. No Hazardous Substances, as defined below, shall be generated, treated, stored or disposed, released or deposited in or on the Sites, including without limitation, into the surface and subsurface waters of and drain or sewer system serving the Site, except for those materials listed on Exhibit D which are used or generated in Tenant's Permitted Use of the Sites. The Exhibit D Hazardous Substances shall be stored, transported and ultimately disposed of at an authorized site in accordance with all applicable laws, rules and regulations and shall in no event be disposed, released or deposited in or on all Sites.
 - b. No activity shall be undertaken on the Sites which would cause:
 - (i) any Site to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise cause the Tenant or the Landlord to be in violation of, the Resource Conservation

and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., or any similar state law or local ordinance;

- (ii) a release or threatened release from any source on any Site of Hazardous Substances within the meaning of, or which would otherwise cause a Site to be in violation of, the Comprehensive Environmental Response Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq., or any similar state law or local ordinance; or
 - (iii) the discharge of pollutants or effluents into any surface or subsurface water or drain or sewer system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. Section 1251 et seq. or the Clean Air Act ("CAA"), 42 U.S.C. Section 7410 et seq., or any similar state law or local ordinance;
- c. There shall be no substances or conditions permitted in or on any Site which may support an administrative or judicial citation, notice of violation, order, claim or cause of action under RCRA, CERCLA, any other federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirements or under any common law claim relating to environmental matters, or which could result in recovery by any governmental or private party of remedial or removal costs, natural resources damages, property damages, damages for personal injuries or other costs, expenses or damages, or which could result in injunctive relief arising from any alleged injury or threat of injury to health, safety or the environment; and
 - d. there shall be no release(s) or threatened release(s) of Hazardous Substances from the underground storage tanks located on the Sites, if any.
- 3. For purposes of this Lease, "Hazardous Substances" shall mean any and all hazardous or toxic substances, hazardous constituents, contaminants, wastes, pollutants or petroleum, including, without

limitation, crude oil or any fraction thereof, and hazardous or toxic substances, pollutants and/or contaminants as such terms are defined in CERCLA or RCRA; asbestos or material containing asbestos; and polychlorinated biphenyls (PCB); PCB articles or PCB containers.

4. Tenant shall provide Landlord with copies of its current underground storage tank registrations on all Sites on a annual basis.
5. Tenant shall notify Landlord of its method of release detection from the UST Systems and shall report the results from such methodology to Landlord annually with respect to all Sites.
6. Tenant shall be responsible for any waste generated as a result of Tenant's construction activities on the Sites. Expenses associated with the removal of such waste shall be paid by Tenant.
7. Tenant shall be responsible for and shall assume all liability from exposure to contamination by Tenant's employees, servants, agents, invitees or contractors.
8. Within ten (10) days following the Commencement Date, Tenant will test the underground storage tanks and lines. Copies of all test results and reports will be promptly forwarded to Landlord. Landlord shall reimburse Tenant for one-half of the standard costs for such work.
9. Tenant shall perform all upgrades or replacement work required by applicable laws, rules and regulations with respect to the UST Systems on the Sites at its sole cost and expense.
10. The expiration of this Lease, or earlier termination or cancellation, Tenant shall do tank and line testing and environmental testing of a mutually agreed scope and shall provide copies to Landlord. In the event that the test results indicate hydrocarbon or other contamination which is in excess of the then existing applicable requirements imposed by any governmental authority with jurisdiction, then Tenant shall take such action as is required with respect to such contamination as described in Exhibit E.

C. Maintenance of Tank Fund Eligibility.

If, following Closing, Tenant fails through its actions or inactions to maintain the eligibility of a Site under the state underground storage tank fund, then

1. Landlord shall have no further responsibility to Tenant with respect to the remediation of the Existing Contamination at the Site for which eligibility has not been maintained by Tenant;
2. Any indemnity obligation of Landlord to perform the work with respect to Existing Contamination at the Site shall end; and
3. Tenant shall thereafter perform the remediation work with respect to Existing Contamination at the Site and indemnify and hold Landlord harmless from and against all claims, expenses (including reasonable attorneys' fees), loss and liability arising from Existing Contamination at the Site.

D. Subsequent Releases.

1. Distinct Release.

If, following Closing, a material spill, leak or other release of hydrocarbons or other contamination occurs at the Site for which a release has been reported prior to the Site meeting the Clean Standard ("Post-Closing Contamination") and such release is unrelated to Landlord's remediation activity and is not due to any negligence or other wrongful conduct by Landlord in conducting such remediation activity and the hydrocarbons or other contamination attributable to such release can be segregated from Existing Contamination, then

- a. Tenant shall indemnify and hold Landlord harmless from and against that portion of all claims, expenses (including reasonable attorney's fees) loss and liability to third parties arising from a leak, spill or release of hydrocarbons or other hazardous substances on the Site caused by Tenant's operations conducted on the Site after Closing ("Post-Closing Contamination"). Tenant shall be solely responsible for the cost of that portion of the cleanup, remediation, monitoring and disposal work, and for the satisfaction of that portion of all third-party liabilities, attributable to such Post-Closing Contamination. Tenant shall also be responsible for any costs for government ordered remediation which exceed the maximum compensation allowed by the state tank fund with respect to Post-Closing Contamination.

- b. Landlord shall continue to be responsible for meeting the Clean Standard for the Site with respect to the Existing Contamination as provided in Section 11. A.1 above.
- 2. **Commingled Contamination.**
 - a. If after Closing, Landlord reasonably determines during the performance of the cleanup work that levels of contaminants present at the Site for which a release has been reported exceeds the level of such contaminants reflected in the groundwater and soil at the Site on the Commencement Date in an amount which would significantly increase the cost of the cleanup operations required, and reasonably suspects that such increased levels occurred as a result of contamination occurring on the Site after Commencement of the Lease ("Post-Closing Contamination"), it shall so notify Tenant.
 - b. Within twenty-four (24) hours after the receipt of notice of such contamination (the "Contamination Notice") or such other reasonable time as shall be agreed to by the parties in writing, Tenant and Landlord shall confer as to and shall take such steps as are necessary to determine the following:
 - (i) Whether or not the increase in the level of contaminants is the result of Existing Contamination or Post-Closing Contamination, and
 - (ii) If the source of the increase in the level of contaminants is the result of a Post-Closing Contamination:
 - (a) the action to take to cleanup the Post-Closing Contamination,
 - (b) the cost of cleanup work for the Post-Closing Contamination, and
 - (c) whether the Post-Closing Contamination has or will migrate off the Site before such recommended cleanup work can remediate such contamination and if so the percentage of all injury or damage caused or to be caused to any adjoining property, if any, attributable to such Post-Closing Contamination.

(d) The percentage of the total estimated costs of the cleanup of the Site attributable to Existing Contamination and the percentage attributable to Post-Closing Contamination.

c. If the parties are unable to reach agreement as to all items listed in Section 11 D.2.b above within thirty (30) days from receipt of the Contamination Notice, then the parties shall hire an environmental consultant mutually agreeable to both parties and experienced in managing and remediating the type of contamination found at the Site. Such consultant shall review the applicable facts, conduct such tests as it deems reasonably necessary, and prepare and submit a written report addressing each of the issues listed in Section 11 D.2.b above. The costs of hiring such environmental consultant shall be borne one-half by each party. If either party does not agree with the findings provided in such environmental consultant's report, such party shall provide the other party written notice of such fact within ten (10) days from receipt of such report. If either party timely provides such notice, such party shall, at its sole cost and expense, hire a separate environmental consultant of like qualification to independently review the applicable facts, perform necessary tests, and provide to each party and the first environmental consultant a written report addressing such said Section 11 D.2.b issue. If within thirty (30) days from receipt of the report from the second environmental consultant, Tenant and Landlord, after consultation with both consultants, are not able to reach mutual agreement as to each issue of Section 11 D.2.b, Tenant and Landlord shall promptly proceed to submit the issue to arbitration in accordance with the rules and procedures of the American Arbitration Association. Such arbitration shall be performed by single arbitrator. The decision of said arbitrator shall be final and binding upon the parties. The cost of said arbitration shall be borne one-half by each party.

d. If the total amount of costs attributable to Post-Closing contamination cleanup work as

determined under Section 11 D.2.b above exceeds fifty percent (50%) of the total costs of the cleanup of the Site (whether or not reimbursed by the state tank fund), Landlord may request and Tenant will within thirty (30) days assume responsibility for all remaining cleanup work with respect to the Site. Tenant's assumption of responsibility for any such clean up work shall not relieve Landlord of its obligation to pay its share of any clean up costs.

- e. The parties shall pay their respective percentages of the cost of cleanup and shall be reimbursed their proportionate share of payments received from the state tank fund.
- f. In the event of the Site having both Existing Contamination and Post-Closing Contamination, both parties agree to cooperate fully and to the maximum extent permitted by applicable rules and regulations in the joint pursuit of:
 - (i) insurance coverage for all costs incurred in the remediation work; and
 - (ii) coverage, to the greatest extent possible, under the state tank fund.

E. **UST System Upgrades and New Dispenser Installation.**
For work done by Tenant to upgrade the UST systems and lines and to install dispensers at any of the Sites, Landlord will be responsible for the costs associated with the excavation, removal, and disposal of any contaminated soil and water which may be excavated or removed as part of the work for the upgrade and the dispenser installation at a Site provided that the following requirements have been satisfied with respect to each Site for which Tenant desires Landlord to pay for such costs: Tenant has given Landlord notice of its intent to do the work and provided construction drawings and a schedule for the work satisfactory to Landlord; and the eligibility of the Site for reimbursement from the state underground storage tank fund is not lost or jeopardized as a result of the work done by Tenant.

F. **Covenant Not to Sue.**
Tenant agrees that it shall not pursue Landlord on any environmental claims Tenant may have against Landlord as a result of leasing a Site so long as Landlord is not in default under the terms and conditions of this Section 11. In the event Tenant provides written notice to Landlord of a material breach of this Section 11, and

Landlord fails or refuses to cure such breach or commence the cure of such breach within thirty (30) days thereafter, this Covenant Not to Sue shall be deemed null, void and of no effect and Tenant shall be entitled to pursue such remedies as are permitted by law. When a Site has met the Clean Standard, the parties acknowledge that there can be no default by Landlord with respect to such Site under the terms of this Section 11 and Tenant's covenant not to sue Landlord shall remain in full force and effect.

12. Indemnification.

Tenant shall defend, indemnify and hold Landlord, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them harmless from and against, any claims, including third party claims, damages, liabilities, costs or expense (including reasonable attorneys' fees) suffered or incurred by any of them, (i) arising out of or incident to the use of the Premises by Tenant, its customers, invitees, licensees, contractors, agents or employees or any act or omission of any of them in, on or relating to the Premises or the conduct of Tenant's business therein or thereon; (ii) that otherwise result from or are caused by any event or occurrence in, on or about the Premises during the term of the Lease (unless such event or occurrence is caused by the act or omission of Landlord); or (iii) arising from any breach or default on Tenant's part in the observance or performance of any covenant or obligation set forth in this Lease. Without limiting the generality of the foregoing, Tenant shall defend, indemnify and hold harmless Landlord, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them against any claims, including third party claims, damages, liability, cost or expense arising out of contamination occurring on the Premises during the term of this Lease (unless such contamination is caused by the act or omission of Landlord).

Landlord shall save, defend, indemnify and hold Tenant, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them harmless from and against, any claims, including third party claims, damages, liabilities, costs or expense (including reasonable attorneys' fees) suffered or incurred by any of them arising out of or incident to the use of the Premises by Landlord, its customers, invitees, licensees, contractors, agents or employees or any act or omission of any of them in, on or relating to the Premises or the conduct of Landlord's business therein or thereon. Without limiting the generality of the foregoing, Landlord shall defend, indemnify and hold harmless Tenant, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them against any claims, including third party claims, damages, liability, cost or expense arising out of contamination existing on the Premises prior to the Commencement

Date of this Lease (unless such contamination is caused by the act or omission of Tenant).

Tenant shall assume no liability or responsibility for contamination existing on the Premises prior to the Commencement Date of this Lease. Tenant shall be responsible for and shall indemnify Landlord, its shareholders, officers, directors, agents, servants, employees and the heirs, successors and assigns of any of them against any claims, obligations or liability resulting from the use or presence of, or any release or discharge of any hazardous or toxic substance or waste or other violation of any environmental laws or regulations which occurs in, on, or emanates from the Premises during the term of the Lease.

If a party seeking indemnification under the foregoing provisions (the "Indemnified Party") becomes aware of a claim for which the Indemnified Party may be entitled to indemnify, it shall give prompt notice thereof to the other party (the "Indemnitor") and shall provide all information and documents available to the Indemnified Party relevant to such claim. Within thirty (30) days after receipt of such notice, the Indemnitor shall notify the Indemnified Party whether the Indemnitor agrees that the claim is covered by the indemnity, or whether the Indemnitor contends that the claim is not covered by the indemnity. If the Indemnitor has agreed that the claim is covered by the indemnity, the Indemnitor shall have the right to defend the claim at its own expense and to compromise, settle or otherwise dispose of such claim as the Indemnitor sees fit. If the Indemnitor has contended that the claim is not covered by the indemnity, or has failed to respond to the notice, then the Indemnified Party may defend the claim and may enter into any reasonable settlement thereof and later assert its rights against the Indemnitor. The indemnities herein are in addition to other remedies available to the parties.

13. Tenant Repairs and Alterations.

- A. Tenant shall not make any alterations, additions or improvements to the Premises which have a cost to Tenant greater than Fifty Thousand Dollars (\$50,000.00), or change any plumbing or wiring without the prior written consent of Landlord. Plans and specifications for such work shall be submitted to and approved in writing by Landlord prior to commencement of any such work. Landlord shall have the right to approve Tenant's selection of contractors as well as the general manner and method in which such work is to be performed. Prior to commencement of any work, Tenant shall provide Landlord with insurance certificates evidencing that all contractors and subcontractors have workmen's compensation insurance, and builder's risk insurance in amounts and with coverages satisfactory to Landlord. Any such improvements, including wall covering, paneling and built-in cabinet work, but excepting movable furniture

and trade fixtures, shall at once become a part of the realty and belong to Landlord and shall be surrendered with the Premises, unless Landlord elects to require Tenant, at Tenant's sole cost and expense, to remove any such alterations, additions or improvements and to repair any damage to the Premises caused by such removal.

- B. Tenant shall pay or cause to be paid all costs for work done by or caused to be done on behalf of Tenant on the Premises of a character which may result in liens against Landlord's interest in the Premises, and Tenant will keep the same free and clear of all mechanic's liens and other liens on account of work done for or on behalf of Tenant or persons claiming under Tenant. Tenant hereby agrees to indemnify, defend and save Landlord harmless from all liability, loss, damages, costs or expenses, including attorney's fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials or supplies furnished to Tenant, including lien claims of laborer, materialmen or others. Should any such liens be filed or recorded against the Premises with respect to work done for or materials supplied to or on behalf of Tenant or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within twenty (20) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security. If Tenant shall be delinquent in paying any charge for which such a mechanic's lien or suit to foreclose such a lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but shall not be required to) pay such lien or claim and costs associated therewith, and the amount so paid, together with interest at the rate of 15% per annum and reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord.

14. Insurance.

- A. Tenant shall procure and maintain at its own expense at all times during the Lease Term, All Risk property insurance on Tenant's property and contents in an amount not less than full replacement cost. The term "full replacement cost" shall mean the actual replacement cost without deduction for physical depreciation, subject to an annual review of increases of insurance coverage. Landlord shall be named as an additional insured and Tenant shall furnish to Landlord certificates evidencing the existence and continuation in force of such policies.

- B. If Tenant is engaged in automotive service and repair work, Tenant shall procure and maintain at its own expense at all times during the Lease Term, Garage Hazard insurance and Garagekeepers Legal Liability insurance with limits of not less than \$1,000,000 per occurrence, combined single limit for bodily injury and property damage. Said insurance shall name Landlord as an additional insured and shall be primary to any insurance maintained by Landlord.
- C. If Tenant is engaged in other than automotive service and repair work, Tenant shall procure and maintain at its own expense at all times during the Lease Term, Comprehensive General Liability insurance (occurrence form policy) with limits not less than \$1,000,000 per occurrence combined single limits for bodily injury and property damage. Such coverage shall include Contractual Liability, Personal Injury, Broad Form Property Damage, Fire Legal Liability, Products Liability, and Completed Operations Liability. Said insurance shall name Landlord as an additional insured and shall be primary to any insurance maintained by Landlord.
- D. All insurance required of Tenant under this Section 14 shall be procured from a responsible insurance company authorized to do business in Nebraska and rated no lower than "A" by A. M. Best Company, and shall be otherwise satisfactory to Landlord. Tenant shall provide Landlord with certificate(s) of such insurance upon commencement of the Lease Term and at such other times as may be requested by Landlord, and a binder indicating the renewal of Tenant's insurance at least thirty (30) days prior to any renewal date thereof. The certificates shall indicate that (i) Tenant's property insurance contains the waiver of subrogation required by Section 15, (ii) Tenant's liability coverages name Landlord as an additional insured and (iii) none of Tenant's insurance coverages may be cancelled or altered except upon thirty (30) days prior written notice to Landlord. The limits of Tenant's insurance shall not, under any circumstances, limit the liability of Tenant as otherwise provided in this Lease.

15. Waiver of Subrogation.

Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss or damage to property insured by fire, extended coverage, or any other property insurance policies. Landlord and Tenant shall obtain waiver of subrogation endorsements as part of the property insurance policies procured pursuant to Section 14(a) above.

16. Limited Liability.

Landlord shall not be liable for and no constructive eviction shall result from any loss or damage resulting from: (a) fire, explosion, falling plaster, steam, gas, electricity, water or rain involving any failure of the electrical wiring, pipes, plumbing systems or appliances, the roof, street or subsurface; (b) any variation or interruption of utilities or other services; (c) theft or other criminal acts of third parties; or (d) any other cause whatsoever, unless due to the gross negligence of Landlord.

17. Assignment, Subletting and Mortgaging.

- a. Tenant shall not assign this Lease or sublet all or any part of the Premises without the prior written consent of Landlord, which may be granted or withheld by Landlord for any reason in its sole discretion. Landlord's consent to any requested assignment or subletting shall not relieve Tenant of its obligations hereunder and shall not be construed as a novation of this Lease.
- b. All subleases or assignments shall be in writing and a copy thereof provided to Landlord within ten (10) days prior to their effective dates. All subleases shall further contain an express provision that in the event of any default by Tenant under this Lease and upon notice thereof to the subtenant from Landlord, all rent payable by the subtenant shall be paid directly to Landlord for the Tenant's account until subsequent notice from Landlord that such default has been cured. Notwithstanding the foregoing, receipt by Landlord of rent directly from the subtenant shall not be considered a waiver of the default on the part of Tenant, nor an acceptance of such subtenant.
- c. Tenant shall not create or suffer to be created any mortgage, security interest or other lien or encumbrance against the Premises or any improvements or additions thereon, or against any equipment or fixtures installed by Tenant therein (other than Tenant's removable personal property or trade fixtures), and should any such mortgage, security interest, lien or encumbrance be created in breach of the foregoing, Landlord shall be entitled to discharge the same, and any amount expended by Landlord to discharge the same shall be considered additional rent hereunder and shall be payable by Tenant upon demand from Landlord.

18. Damage By Casualty.

Unless the parties otherwise agree in writing as to a revision of all or any part of the following provisions pertaining to the restoration, repair and rebuilding of the Premises or any portion thereof in the event of a casualty; the payee of insurance proceeds; the allocation of any excess proceeds; and/or any

abatement or reduction or termination of Tenant's obligation to pay rent, the provisions of this paragraph 18 shall apply. In the event the Premises or any portion thereof is damaged in whole or in part by fire or other casualty during the term of this Lease, Tenant is obligated to restore, repair and rebuild such damaged area and property. Any and all insurance proceeds shall be applied to such restoration, repairs or rebuilding. To the extent that all insurance proceeds are not required for such restoration, repairs or rebuilding, then said excess of insurance proceeds shall be equally divided between Landlord and Tenant. Notwithstanding anything contained herein to the contrary, Tenant's obligation to continue to make payments of rent or otherwise shall not be abated, reduced or terminated as a result of such casualty.

19. Eminent Domain and Condemnation.

If the whole or any portion of the Premises is taken by any public authority under the power of eminent domain or similar power, Landlord shall receive the entire award or price which is paid by the public authority. The rent payable by Tenant shall be reduced in just proportion to the nature, value and extent which the part of the Premises being taken bears to the entire Premises as agreed to by the parties. In addition, under these circumstances, Landlord shall pay for the repair of that part of the Premises which was not taken and which requires repair as a result of the taking. In the event of a partial condemnation, the Sublease pertaining to the particular Site which is being taken may be terminated by Landlord, in Landlord's sole discretion, in which event all obligation of Tenant to pay rent for the particular Site will be terminated effective the date on which Landlord gives notice of its exercise of its option to terminate.

20. Termination.

If there is filed by or against Tenant in any Court pursuant to any United States or state statute, a Petition in Bankruptcy or Insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and within thirty (30) days thereof Tenant fails to secure a discharge thereof, or if Tenant makes an assignment for the benefit of creditors or petitions for or enters into an arrangement therewith, this Lease, at the option of Landlord which shall be exercised within a reasonable time after notice of the happening of any one or more of such events, may be cancelled and terminated and in which event neither Tenant, nor any person claiming through or under Tenant by virtue of any statute or order of any court, shall be entitled to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies Landlord has by virtue of any statute or rule of law, may retain any rent, security deposit or monies received by it from Tenant or others on behalf of Tenant.

21. Marginal Sites.

If Tenant determines in good faith that it is not able to profitably operate either Site for a period of six (6) consecutive months, Tenant shall give Landlord notice thereof together with evidence demonstrating the inability of the Site to be profitably operated. If such evidence is reasonably satisfactory to Landlord, the Site shall be designated a Marginal Site. Landlord shall then have thirty (30) days to give Tenant notice whether or not Landlord will terminate the Sublease with respect to the Marginal Site. If Landlord elects to terminate, Tenant's obligation to pay rent for the site will terminate thirty (30) days after the date notice was given to Landlord, and Landlord will be responsible for any requirements governing the removal of the UST System on the Site. If Landlord elects not to terminate the Sublease with respect to the Marginal Site, Tenant's obligation to pay rent for the Site will continue but Landlord shall be responsible for any requirements for removal of the UST System on the Site. Except as provided in this paragraph and irrespective of Landlord's decision whether or not to terminate the Sublease with respect to a Marginal Site, Tenant shall remain responsible for its obligations pursuant to Paragraph 11.B.

22. Entry By Landlord.

- A. Landlord and its agents shall have the right to enter the Premises at any time for the purpose of examining inspecting the Premises.
- B. Landlord may enter the Premises at all reasonable times to show the same to prospective purchasers or tenants of the Premises. If Tenant shall not be personally present to open and permit entry into the Premises, Landlord may enter by means of a master key without any liability to Tenant, except for any failure to exercise due care with regard to Tenant's property.
- C. If during the last month of the Lease Term, Tenant shall have removed substantially all of its property from the Premises, Landlord may immediately enter and alter, renovate, and redecorate the Premises without termination or abatement of Rent; provided, however, that Landlord shall pay Tenant for the fair market value of any damage done by Landlord to Tenant's property remaining on the Premises during the last month of the Lease Term.

23. Other Income.

To the extent that Landlord receives income from pay telephones and ATMs located on the Premises, this income shall be paid to Tenant. Landlord has no knowledge of the receipt of any such income and shall have no obligation to Tenant to collect any such income paid to the owner of the Premises or to otherwise undertake any action against the owner of the Premises for the benefit of Tenant to collect any such income.

24. Default By Tenant.

A. The following events (herein referred to as an "Event of Default") shall constitute a default by Tenant hereunder:

1. Tenant shall default in the due and punctual payment of Rent or any other amounts payable hereunder, and such default shall continue for five (5) days after written notice thereof by Landlord to Tenant, unless otherwise specifically provided herein.
2. Tenant shall vacate or abandon the Premises.
3. If this Lease or the estate of Tenant hereunder shall be transferred to or shall pass to or devolve upon any other person or party except in the manner herein provided.
4. This Lease of the Premises, or any part thereof, shall be taken upon execution or by any other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and said attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof.
5. Occurrences causing termination of this Lease as provided in Section 20.
6. Tenant shall fail to take possession of the Premises on the Commencement Date of this Lease.
7. Tenant shall fail to be open for business for at least eight (8) hours per day for more than eight (8) days in any thirty (30) day period.
8. Tenant shall fail to perform any of the other agreements, terms, covenants or conditions herein on Tenant's part to be performed, and such nonperformance shall continue for a period of ten (10) days after written notice thereof by Landlord to Tenant.

B. Upon the occurrence of an Event of Default, Landlord may at any time thereafter, in its sole discretion, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Event of Default, elect to pursue one or more of the following remedies:

1. Re-enter and take possession of the Premises without prejudice to any remedies for arrears of Rent or other sums due. Should Landlord elect to

reenter the Premises as provided in this subsection 1. or take possession pursuant to legal proceedings, Landlord may, without terminating this Lease, relet the Premises or any part hereof in Landlord's or Tenant's name, but for the account of Tenant, upon such term or terms (which may include concessions of free rent and tenant finish) as Landlord determines to be necessary. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant.

2. In the event that Landlord relets the Premises, or a portion thereof, Tenant shall pay to Landlord: (a) the Rent and other sums as herein provided, which would be payable hereunder if such repossession had not occurred, less (b) the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting.
3. In the event this Lease is terminated, Tenant shall remain liable to Landlord for damages in an amount equal to the Rent and other sums arising under this Lease for the balance of the Lease Term as if this Lease had not been terminated, less the net proceeds, if any, from any subsequent reletting, after deducting all expenses associated therewith. Tenant shall pay such amounts to Landlord monthly on the days on which such sums would have otherwise been payable.

25. Subordination and Attornment.

- A. This Lease is subordinate to any mortgage or deed of trust now or hereafter placed on the Premises and to any renewal, modification, consolidation, replacement or extension of such mortgage or deed of trust and the addition of any other mortgage or deed of trust granted after the date of execution of this Lease. This clause shall be self-operative, and no further instrument of subordination shall be required. Within five (5) days after written request by Landlord, Tenant shall execute any documents which may be desirable to or required of Landlord to confirm the subordination of this Lease. Landlord is hereby irrevocably appointed agent for and attorney-in-fact of Tenant to execute all such subordination instruments in the event Tenant fails to execute said instrument within five (5) days after notice from Landlord demanding the execution thereof. At the request of Tenant, Landlord shall request a

nondisturbance agreement from the lender, although Landlord makes no representation or guaranty that such nondisturbance agreement can be obtained.

- B. Tenant agrees in the event of a sale, transfer, or assignment of the Landlord's interest in the Premises or any part thereof, to attorn to and to recognize such sale, transfer or assignment and such purchaser, transferee or assignee as Landlord under this Lease.

26. Estoppel Certificate.

Tenant shall, within ten (10) days after a written request from Landlord, execute, acknowledge and deliver to Landlord a statement, in writing, certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which rental and other charges are paid in advance, if any, and acknowledging that there are not, to Tenant's knowledge, any defaults on the part of Landlord hereunder, or specifying such defaults, if any are claimed. It is expressly understood and agreed that any such statements may be relied upon by a prospective purchaser, transferee or encumbrancer of all or any portion of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification, except as may be represented by Landlord, and that Landlord is not in default in the performance of its obligations and that no more than one (1) month's rental has been paid in advance.

27. Abandonment.

Tenant shall not vacate or abandon the Premises at any time during the Lease Term, and if Tenant shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned. All such abandoned property may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or any other person, and without obligation to account therefore; and Tenant shall pay Landlord all expenses incurred in connection with the disposition of such property.

28. Brokers.

Tenant hereby agrees to indemnify and hold Landlord harmless from any and all losses, costs, damages or expenses by reason of any claim of or liability to any broker or person claiming through Tenant and arising out of or in connection with the negotiation, execution and delivery of this Lease or any extension or modification thereof. Tenant hereby indemnifies Landlord against, and Tenant shall be liable for the payment of, all reasonable attorneys' fees, costs and expenses incurred by Landlord in

defending against any such claim and in the event any Claimant shall be successful in an action to secure payment of a commission, Tenant shall, upon demand, make payment to such Claimant.

29. Quiet Possession.

Landlord covenants that it has full right and power to execute and perform this Lease and that it will put Tenant into complete and exclusive possession of the Premises. Landlord further covenants that Tenant, upon paying the rents set forth herein and performing the covenants and agreements hereof shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements and privileges thereto belonging during the term hereof.

30. Notice.

All notices shall be in writing, and deemed effective when delivered personally, deposited in the U.S. Mail, postage prepaid, certified or registered, return receipt requested, or delivered by overnight delivery service to Landlord or to Tenant as set forth below or to such other place as either party may designate from time to time by written notice.

To Landlord at: Total Petroleum, Inc.
 900 19th Street,
 TOTAL Tower, Suite 2201
 Denver, Colorado 80202
 Attn: Real Estate Department

To Tenant at: The Benson Corporation
 200 Essex Court
 Omaha, Nebraska 68114
 Attn: Thomas N. Campbell, President

31. General Provisions.

- A. The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver in any subsequent matter. The acceptance of monies from Tenant shall not be deemed to be a waiver of any default by Tenant.
- B. The headings to the sections of this Lease shall have no effect upon the construction or interpretation of any part hereof.
- C. Time is of the essence in this Lease.
- D. The covenants and conditions herein contained bind the heirs, successors, executors, administrators, and assigns of the parties hereto.
- E. Neither Landlord nor Tenant shall record this Lease, but Tenant shall execute, at the request of Landlord, a

short form memorandum hereof which may be recorded at the election of Landlord.

- F. Upon Tenant paying all sums required hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Lease Term, subject to all the provisions of this Lease.
- G. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws and resolutions of said corporation, and that this Lease is binding upon said corporation. If Tenant is a partnership, each individual executing this Lease on behalf of such partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the partnership, and that this Lease is binding on the partnership.
- H. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.
- I. This Lease shall be governed by the laws of the state of Nebraska.
- J. In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover court costs and attorneys' fees from the other party. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorneys' fees and court costs reasonably incurred by Landlord.
- K. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned herein, and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.
- L. This Lease and the obligations of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is

caused by reason of strike, labor disputes, acts of God, or any other cause beyond the reasonable control of the Landlord.

- M. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way effect, impair, or invalidate any other provision hereof and such other provision shall remain in full force and effect.
- N. Tenant shall provide its most recent financial statement to Landlord within fifteen (15) days of the Landlord's request therefor.
- O. The submission or delivery of this document for examination and review does not constitute an option, an offer to lease space in the Premises or an agreement to lease. This document shall have no binding effect on the parties unless and until executed by both Landlord and Tenant.
- P. All exhibits and attachments referenced in this Lease are incorporated in and made a part of this Lease as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

TOTAL PETROLEUM, INC.,
a Michigan corporation

By: _____

C. Gary Jones
Senior Vice President, Marketing

TENANT:

THE BENSON CORPORATION,
a Delaware corporation

By: _____

Thomas N. Campbell
Title: President

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____
day of _____, 1994, by _____
as _____
of Total Petroleum, Inc.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public

STATE OF *Oklahoma*)
) ss.
COUNTY OF *Tulsa*)

The foregoing instrument was acknowledged before me this
7th day of *February*, 1994, by *Thomas N. Campbell*
the *President* of *The Benson Corporation*,
a *Delaware* corporation, on behalf of the
corporation.

Witness my hand and official seal.

My commission expires: *2/27/96*

(SEAL)

Mary Kay Campbell

Notary Public

EXHIBIT A - 1

LEGAL DESCRIPTION

The following is the legal description for that certain real estate situated in the City of Omaha, County of Douglas, State of Nebraska, to-wit:

Lot 10, in Block 93, in SOUTH OMAHA, now a part of the City of Omaha, as surveyed, platted, and recorded, in Douglas County, Nebraska.

Known and numbered as 4215 S. 24th Street, Omaha, Nebraska 68107.

EXHIBIT A - 1

LEGAL DESCRIPTION

The following is the legal description for that certain real estate situated in the City of Omaha, County of Douglas, State of Nebraska, to-wit:

The East 190 feet of Sublot 1 of Lots 5 and 6, and the East 54 feet of the North 10 feet of Sublot 8 of Lot 6, and the East 14 feet of Sublot 10 of Lot 6, in CAPITOL ADDITION, an Addition to the City of Omaha, as surveyed, platted, and recorded, in Douglas County, Nebraska.

Known and numbered as 2431 Farnam Street, Omaha, Nebraska 68131.