

2001

Joseph Mecham v. Consolidated Oil &
Transportation, INC., A Colorado Corporation,
Chase Manhattan Bank, a New York Corporation :
Brief of Appellant

Utah Court of Appeals

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Barbara L. Maw; Clark B. Allred; McKeachinie, Allred, McClellan & Trotter; Attorneys for Appellees.
Wayne A. Freestone; Parker, Freestone & Angerhoffer; Attorney for Appellant.

Recommended Citation

Brief of Appellant, *Mecham v. Consolidated Oil*, No. 20010041 (Utah Court of Appeals, 2001).
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IN THE UTAH COURT OF APPEALS

JOSEPH MECHAM

Plaintiff/Appellant,

vs.

**CONSOLIDATED OIL &
TRANSPORTATION, INC., A Colorado
Corporation, CHASE MANHATTEN
BANK, a New York Corporation,**

Defendant/Appellee.

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Priority No.: 15

Case Number: 20010041-CA

Dist. Ct. No: 960800543

ADDENDUM TO BRIEF OF APPELLANT

**APPEAL FROM ORDER ENTERED IN THE EIGHTH DISTRICT COURT
UINTAH COUNTY, STATE OF UTAH
THE HONORABLE A. LYNN PAYNE**

**Barbara L. Maw
185 South State Street, Suite 340
Salt Lake City, Utah 84111
Attorney for Chase Manhattan Bank**

**Clark B. Allred
MCKEACHINIE, ALLRED, MCCLELLAN
& TROTTER
121 West Main Street
Vernal, Utah 83078
Attorney for Consolidated Oil & Transportation**

**Wayne A. Freestone
PARKER, FREESTONE &
ANGERHOFER
Crescent Square #13
11075 South State Street
Sandy, Utah 84070
Attorney for Appellant**

FILED

ADDENDUM

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AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of June 24, 1992

Between

LANDMARK PETROLEUM INC.

and

THE CHASE MANHATTAN BANK, N.A.

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT dated as of June 24, 1992, is by and between LANDMARK PETROLEUM INC., a Delaware corporation (the "Company"), and THE CHASE MANHATTAN BANK, N.A., a national banking association (together with its successors and assigns, the "Bank").

RECITALS

WHEREAS, pursuant to that certain Credit Agreement dated as of November 5, 1990 (such agreement, as amended by that certain First Amendment and Supplement dated as of February 20, 1991, the "Original Credit Agreement"), by and among the Company, The Chase Manhattan Bank, N.A., as agent (in such capacity, the "Agent"), and the banks that are a signatory thereto, the Company received certain loans;

WHEREAS, The Chase Manhattan Bank, N.A. is the only bank that is a signatory to the Original Credit Agreement (in such capacity, the "Original Bank");

WHEREAS, such loans received by the Company are evidenced by that certain promissory note dated November 5, 1990, issued by the Company in the original principal amount of \$10,000,000.00, and made payable to the order of the Original Bank (the "Original Term Note"), and that certain promissory note dated November 5, 1990, issued by the Company in the original principal amount of \$25,000,000.00, and made payable to the order of the Original Bank (the "Original Revolving Credit Note"; the Original Term Note and the Original Revolving Credit Note shall hereinafter be collectively referred to as the "Original Notes");

WHEREAS, the Original Notes are secured by the Security Instruments (as defined in the Original Credit Agreement and hereinafter defined as the "Original Security Instruments");

WHEREAS, upon the terms and conditions herein stated, the Company has requested and the Bank has agreed, inter alia, to renew, rearrange, modify and extend the indebtedness evidenced by the Original Notes and to provide a new revolving credit/letter of credit facility;

WHEREAS, pursuant to the Option Agreement (CPI) (as hereinafter defined), the Company is granting to Colorado Processing, Inc. ("CPI"), a Utah corporation and wholly-owned subsidiary of Flying J Inc., an option to acquire substantially all of the assets and business of the Company, subject to CPI's assumption of all indebtedness and liabilities of the Company;

WHEREAS, pursuant to that certain Option Agreement (Chase) (as hereinafter defined), Flying J Inc. is granting to the Bank an option to acquire a 25% equity interest in CPI; and

WHEREAS, the Bank is accepting such option from Flying J Inc. as interest on the loans herein provided.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the aforesaid option to be granted to the Bank, and of the loans and commitments hereinafter referred to, the parties hereto agree as follows:

Section 1. Definitions and Accounting Matters.

1.01 Terms Defined Above. As used in this Agreement, the terms "Agent", "Bank", "Company", "CPI", "Original Bank", "Original Credit Agreement", "Original Notes", "Original Revolving Credit Note", "Original Term Note" and "Original Security Instruments" shall have the meanings indicated above.

1.02 Certain Defined Terms. As used herein, the following terms shall have the following meanings (all terms defined in this Section 1 or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and vice versa):

"Affiliate" of any Person shall mean (i) any Person directly or indirectly controlled by, controlling or under common control with such first Person and (ii) any director, officer, partner or stockholder of such first Person or of any Person referred to in clause (i) above.

"Agreement" shall mean this Amended and Restated Credit Agreement, as the same may be further amended, supplemented or modified from time to time.

"Borrowing Request" shall mean a request for a Loan or a Letter of Credit pursuant to Section 2.01 to be substantially in the form attached as Exhibit G.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

"Calciner" shall mean the calciner referred to in the Calciner Operating Agreement.

"Calciner Operating Agreement" shall mean that certain Operating Agreement dated as of November 5, 1990, between the Company and Western Slope, as assigned to the Calciner Operating Subsidiary by the Company pursuant to

that certain General Assignment and Assumption Agreement dated as of November 5, 1990, and as amended by that certain First Amendment to Operating Agreement dated as of June 3, 1992, by and between the Calciner Operating Subsidiary and Western Slope, and as the same may be further amended, supplemented or modified from time to time.

"Calciner Operating Subsidiary" shall mean Landmark Carbon Inc., a Subsidiary formed by the Company to operate the Calciner pursuant to the Calciner Operating Agreement.

"Cash Flow" shall mean for each calendar month an amount equal to the sum of (a) net income for such period determined in accordance with generally accepted accounting principles, (b) all deferred taxes deducted in determining such net income, (c) Interest Expense for such period, and (d) depreciation, depletion, amortization and other non-cash charges deducted in determining such net income less capital expenditures not in excess of \$125,000 per month and the Unused Cap Ex Amount.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commitment" shall mean the Revolving Credit/Letter of Credit Commitment, the Term Loan Commitment and the Special Purpose Credit Commitment.

"Consultation and Service Agreement" shall mean that certain Consultation and Service Agreement dated as of June 19, 1992, by and between the Company, Flying J Inc., a Utah corporation and Big West Oil Company, a wholly owned subsidiary of Flying J Inc.

"Debt" shall mean, for any Person the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, bankers' acceptances, surety or other bonds and similar instruments; (c) all obligations of such Person to pay the deferred purchase price of Property or services, except trade accounts payable (other than for borrowed money) arising in the ordinary course of business of such Person; (d) all obligations under leases which shall have been, or should have been, in accordance with generally accepted accounting principles in effect on the date of this Agreement, recorded as capital leases in respect of

which such Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss; (e) all Debt and other obligations secured by a Lien (other than Excepted Liens provided that the portion of such Debt which has not been paid when due does not exceed \$100,000 in the aggregate at any one time) on any asset of such Person, whether or not such Debt or other obligations are assumed by such Person; (f) all Debt and other obligations of others guaranteed by such Person; and (g) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of other Persons.

"Default" shall mean an Event of Default or an event which with notice or lapse of time or both would become an Event of Default.

"Deferred Accrued Interest" shall mean all interest accrued on the Notes for the period commencing on the date of this Agreement to and including August 31, 1992 and any other interest accrued and unpaid on the Notes.

"Dollars" and "\$" shall mean lawful money of the United States of America.

"Drawdown Termination Date" shall mean the earlier to occur of (a) June 15, 2002 or (b) the date on which the Commitments are terminated or cancelled pursuant to Section 2.03(a) or Section 10.

"Environmental Laws" shall mean any and all applicable laws, statutes, ordinances, rules, regulations, orders, or determinations of any Governmental Authority pertaining to health or the environment applicable to the Company and/or its Subsidiaries or any of its Property in effect in any and all jurisdictions in which the Company and/or its Subsidiaries is conducting or at any time has conducted business, or where the Mortgaged Properties are located, or where any hazardous substances generated by or disposed of by the Company and/or its Subsidiaries are located, including but not limited to the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid

Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended and other environmental conservation or protection laws. The terms "hazardous substance," "release," and "contaminants" shall have the meanings specified in CERCLA, and the terms "solid waste", "hazardous waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, however, that (i) in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and (ii) to the extent the laws of the state in which the Mortgaged Properties are located establish a meaning for "hazardous substance," "release," "hazardous waste," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply to the extent relevant to those state laws.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" shall mean any corporation or trade or business which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as the Company or a Subsidiary or is under common control (within the meaning of Section 414(c) of the Code) with the Company or a Subsidiary.

"Event of Default" shall have the meaning assigned to that term in Section 10.

"Excepted Liens" shall mean:

(a) Liens for taxes, assessments or other governmental charges or levies not yet due or which are being contested in good faith by appropriate action by the Company or any Subsidiary;

(b) Liens in connection with workmen's compensation, unemployment insurance or other social security, old age pension or public liability obligations not yet due or which are being contested in good faith by appropriate action by the Company or any Subsidiary;

(c) vendors', carriers', warehousemen's, repairmen's, mechanics', workmen's, materialmen's,

construction or other like Liens arising by operation of law in the ordinary course of business in respect of obligations which shall have been outstanding not more than 90 days or which are being contested in good faith by appropriate action by the Company or any Subsidiary;

(d) inchoate Liens and charges imposed by law and incidental to construction, maintenance, development or operation of Properties in the ordinary course of business if payment of the obligation secured thereby is not yet due or if the validity or amount of which is being contested in good faith by appropriate action by the Company or any Subsidiary;

(e) Liens reserved in any oil, gas or other mineral lease for rent, royalty or delay rental under such lease and for compliance with the terms of such lease;

(f) Liens for any judgments or attachments if, and only if, such judgments do not constitute an Event of Default under Section 10(j) and such attachments do not exceed (individually or in the aggregate) \$25,000 outstanding at any time;

(g) Liens arising under joint operating agreements for obligations (other than Debt) that are not delinquent and that will be paid or discharged in the ordinary course of the Company's or any Subsidiary's business, or if delinquent, that are being contested in good faith by appropriate action in the ordinary course of the Company's or any Subsidiary's business;

(h) easements, servitudes, rights-of-way and other rights, exceptions, reservations, conditions, limitations, covenants and other restrictions which do not materially interfere with the operation, value or use of the Properties affected thereby;

(i) conventional provisions contained in any contracts or agreements affecting Properties under which the Company or any Subsidiary is required immediately before the expiration, termination or abandonment of a particular Property to reassign to the Company's or such Subsidiary's predecessor in title all or a portion of the Company's or such Subsidiary's rights, titles and interests in and to all or a portion of such Property;

(j) any Lien upon any Property of a Subsidiary in favor of the Company or another Subsidiary as security for Debt or other obligation permitted under this Agreement owing to the Company or such other Subsidiary;

(k) any Lien consisting of (i) statutory and contractual landlord's liens under leases to which the Company or any Subsidiary is a party for rent or for compliance with the terms of such leases, (ii) rights reserved to or vested in any municipality or governmental, statutory or public authority to control or regulate any Property of the Company or any Subsidiary or to use such Property in any manner which does not materially impair the use of such Property for the purposes for which it is held by the Company or any such Subsidiary, and (iii) zoning laws and ordinances and municipal regulations;

(l) Liens described in the Mortgagee Title Policy delivered to the Agent pursuant to the terms of the Original Credit Agreement;

(m) all other Liens (other than Liens securing any Debt), encumbrances, defects and irregularities that are customary in the industry and not, in the aggregate, material in amount as compared to the value of the Mortgaged Property; and

(n) Liens, if any, created by that certain Mutual Access Easement and Use Agreement dated November 5, 1990, by and between the Company and Western Slope (including the non-exclusive easement with respect to water rights to be granted to Western Slope by the Company upon the satisfaction of the conditions set forth in that certain Purchase Agreement (WS) dated June 3, 1992, between the Company, Western Slope and the Bank), and that certain Services Agreement dated as of November 5, 1990, by and between the Company and Western Slope, as amended by that certain First Amendment to Services Agreement dated June 3, 1992, by and between the Company and Western Slope, as such agreements may be further modified from time to time in the ordinary course of business and in good faith to reflect bona fide operation requirements.

"Excess Cash Flow" shall have the meaning assigned to that term in Section 2.05.

"Financial Statements" shall mean the consolidated financial statement or statements of the Company and its Subsidiaries described or referred to in Section 7.02.

"Gary-Williams Subordinated Note" shall mean that certain promissory note dated June 14, 1991, executed by the Company and payable to the order of Gary-Williams Energy Corporation, which promissory note has been assigned by Gary-Williams Energy Corporation to the Bank pursuant to that certain Assignment of Note and Liens (GWEC) dated June 3, 1992.

"Governmental Authority" shall include the United States, the state, county, city and political subdivisions in which any Property of the Company and/or its Subsidiaries is located or which exercises jurisdiction over any such Property, and any agency, department, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over any such Property.

"Governmental Requirement" shall mean any applicable law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other lawful direction or requirement (including, without limitation, Environmental Laws, energy regulations and occupational, safety and health standards or controls) of any (domestic or foreign) federal, state, county, municipal or other government, department, commission, board, court, agency or any other instrumentality of any of them.

"Highest Lawful Rate" shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Notes or on other Indebtedness under laws applicable to the Bank which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"Indebtedness" shall mean any and all amounts owing or to be owing by the Company to the Bank in connection with the Notes or any Security Instrument, including this Agreement and the Letter of Credit Agreements, and all renewals, extensions and/or rearrangements thereof.

"Indemnity Matters" shall have the meaning assigned to that term in Section 11.03.

"Interest Expense" shall mean, for any period, the gross interest expense of the Company for such period.

"Letters of Credit" shall mean the standby letters of credit, commercial letters of credit and direct pay letters of credit hereafter issued by the Bank pursuant to Section 2.01(c), and all reimbursement obligations pertaining to any such letters of credit, and "Letter of Credit" shall mean any one of the Letters of Credit and the reimbursement obligation pertaining thereto.

"Letter of Credit Agreements" shall mean the written agreements with the Bank executed or hereafter executed in connection with the issuance by the Bank of the Letters of Credit, such agreements to be on the Bank's customary form for such letters of credit of comparable amount and purpose, as from time to time in effect.

"Liens" shall mean, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, the Company and its Subsidiaries shall be deemed to own subject to a Lien any asset which any of them has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Loan" shall mean a Revolving Credit Loan, the Term Loan or a Special Purpose Credit Loan and "Loans" shall mean the Revolving Credit Loans, the Term Loan and the Special Purpose Credit Loans.

"Material Adverse Effect" shall mean any material and adverse effect on (i) the assets, liabilities, financial condition, business or operations of the Company and its Subsidiaries taken as a whole from those reflected in the Financial Statements or from the facts represented or warranted in this Agreement or any other Security Instrument, or (ii) the ability of the Company and its Subsidiaries taken as a whole to carry out in all material respects its business as at the date of this Agreement or as proposed at the date of this Agreement to be conducted or meet its obligations under the Notes, this Agreement or the other Security Instruments on a timely basis.

"Mortgaged Property" shall mean the Property owned by the Company or in which the Company owns an undivided interest and which is subject to the Liens, privileges,

priorities and security interests existing and to exist under the terms of the Security Instruments.

"Multiemployer Plan" shall mean a Plan defined as such in Section 3(37) of ERISA to which contributions have been made by the Company or any ERISA Affiliate and which is covered by Title IV of ERISA.

"Notes" shall mean the Term Note, the Revolving Credit Note and the Special Purpose Credit Note.

"Option Agreement (Chase)" shall mean that certain Option Agreement (Chase) dated as of June 24, 1992, by and between the Flying J Inc., CPI and the Bank.

"Option Agreement (CPI)" shall mean that certain Option Agreement (CPI) dated as of June 24, 1992, by and between the Company and CPI.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, trust, unincorporated organization or government or any agency, instrumentality or political subdivision thereof, or any other form of entity.

"Plan" shall mean an employee pension benefit or other plan established or maintained by the Company or any Subsidiary or any ERISA Affiliate and which is covered by Title IV of ERISA, other than a Multiemployer Plan.

"Post-Default Rate" shall mean, in respect of any principal of any Loan or any other amount payable by the Company under this Agreement or any Note which is not paid when due (whether at stated maturity, by acceleration or otherwise), a rate per annum during the period commencing on the due date until such amount is paid in full or the default is cured or waived equal to 2% per annum above the Prime Rate as in effect from time to time, but in no event to exceed the Highest Lawful Rate.

"Prime Rate" shall mean the rate of interest from time to time announced by the Bank at the Principal Office as its prime commercial lending rate. Such rate is set by the Bank as a general reference rate of interest, taking into account such factors as the Bank may deem appropriate, it being understood that many of the Bank's

commercial or other loans are priced in relation to such rate, that it is not necessarily the lowest or best rate actually charged to any customer and that the Bank may make various commercial or other loans at rates of interest having no relationship to such rate. Changes in the rate of interest on Loans will take effect simultaneously with each change in the Prime Rate.

"Principal Office" shall mean the principal office of the Bank, presently located at 1 Chase Manhattan Plaza, New York, New York 10081.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Refinery" shall mean the real property, fixtures and equipment purchased by the Company pursuant to the WS Purchase Agreement.

"Revolving Credit/Letter of Credit Commitment" shall mean the obligation of the Bank to make Revolving Credit Loans or to issue, reissue, renew or extend Letters of Credit for the account of the Company, in an aggregate amount at any one time outstanding equal to \$3,500,000.00 (as the same may be reduced pursuant to Section 2.03 hereof).

"Revolving Credit Loans" shall mean the revolving credit loans as provided for by Section 2.01(b).

"Revolving Credit Note" shall mean the promissory note of the Company provided for in Section 2.04 and being in the form of Exhibit B-1 hereto, together with any and all renewals, extensions for any period, increases or rearrangements thereof.

"Security Instruments" shall mean this Agreement, the Letter of Credit Agreements, the agreements or instruments described or referred to in Exhibit F, and any and all other agreements or instruments now or hereafter executed and delivered by the Company, the Calciner Operating Subsidiary, or any other Person (other than participation or similar agreements between the Bank and any other bank or creditor with respect to any Indebtedness pursuant to this Agreement) in connection with, or as security for the payment or performance of, the Notes, the Letter of Credit Agreements or this Agreement, as such agreements may be amended or supplemented from time to time.

"Subordinated Debt" shall mean the Western Slope Subordinated Note and the Gary-Williams Subordinated Note.

"Subsidiary" shall mean any corporation of which at least a majority of the outstanding shares of stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned by the Company.

"Special Purpose Credit Commitment" shall mean the obligation of the Bank to make an initial Special Purpose Credit Loan equal to the maximum amount of \$3,000,000.00 and certain subsequent Special Purpose Credit Loans.

"Special Purpose Credit Loans" shall mean the special purpose credit loans as provided for by Section 2.01(d).

"Special Purpose Credit Maximum Availability" shall mean an amount equal to the aggregate of all prepayments on the Special Purpose Credit Note with Unused Cap Ex Amounts, as required by Section 2.05(d).

"Special Purpose Credit Note" shall mean the promissory note of the Company provided for in Section 2.01(d) and being in the form of Exhibit B-2 hereto, together with any and all renewals, extensions for any period, increases or rearrangements thereof.

"Term Loan Commitment" shall mean the obligation of the Bank to rearrange \$25,500,000 of the principal balance outstanding on the Original Notes into a Term Loan in an amount equal to \$25,500,000.00.

"Term Loan" shall mean the term loan provided for by Section 2.01(a).

"Term Note" shall mean the promissory note of the Company provided for in Section 2.04 and being in the form of Exhibit A hereto, together with any and all renewals, extensions for any period, increases or rearrangements thereof.

"Trigger Date" shall mean the date on which \$12,500,000 of principal of the Term Note has been paid.

"Unused Cap Ex Amount" shall mean for each month an amount (if a positive number) equal to \$125,000 less the Capital Expenditure made by the Company in such month.

"Western Slope" shall mean Western Slope Refining Company, a Colorado corporation.

"Western Slope Properties" shall mean all of the assets of Western Slope and Gary-Williams Energy Corporation acquired by the Company pursuant to the WS Purchase Agreement and the Purchase Agreement (WS) dated June 3, 1992, between the Company, Western Slope and the Bank.

"Western Slope Subordinated Note" shall mean that certain promissory note dated November 5, 1990, executed by the Company and payable to the order of Western Slope, which promissory note has been assigned by Western Slope to the Bank pursuant to that certain Assignment of Note and Liens (WS) dated June 3, 1992.

"WS Purchase Agreement" shall mean that certain Asset Purchase Agreement made and entered into as of August 17, 1990, between Western Slope and the Company, as amended by First Amendment to Asset Purchase Agreement dated September 20, 1990 and by Second Amendment to Asset Purchase Agreement dated November 1, 1990, together with the Agreement made and entered into by and between Gary-Williams Energy Corporation and the Company dated August 17, 1990.

1.03 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the Bank hereunder shall be prepared, in accordance with generally accepted accounting principles as in effect, applied on a basis consistent with the Financial Statements (except for changes concurred with by the Company's independent public accountants).

Section 2. Commitments.

2.01 Loans and Letters of Credit. The Bank agrees, on the terms of this Agreement, to make the following loans to the Company, and agrees to issue, reissue, renew or extend Letters of Credit for the account of the Company in accordance with the following:

(a) **Term Loan** - Upon the request of the Company as hereinafter provided, \$25,500,000 of the principal balance outstanding on the Original Notes shall be rearranged into a Term Loan.

(b) **Revolving Credit Loans** - During the period from the date of this Agreement to and including the Drawdown Termination Date, Revolving Credit Loans in an aggregate principal amount at any one time outstanding up to, but not exceeding, the amount of the Revolving Credit/Letter of Credit Commitment as then in effect; provided, however, that the aggregate principal amount of all such Revolving Credit Loans made by the Bank hereunder at any one time outstanding shall not exceed (A) the Revolving Credit/Letter of Credit Commitment minus (B) the outstanding Letters of Credit (together with all amounts previously drawn on Letters of Credit but not yet funded as a Revolving Credit Loan pursuant to Section 4.05(b) or reimbursed). Subject to the terms of this Agreement, during the period from the date of this Agreement to and including the Drawdown Termination Date, the Company may borrow, repay and reborrow the amount of the Revolving Credit/Letter of Credit Commitment.

(c) **Letters of Credit** - (i) During the period from the date of this Agreement to and including the Drawdown Termination Date, the Bank agrees to extend credit to the Company at any time and from time to time by issuing, renewing, extending or reissuing Letters of Credit; provided, however, the aggregate amount of all Letters of Credit at any one time outstanding shall not exceed (A) the Revolving Credit/Letter of Credit Commitment minus (B) the sum of all outstanding Revolving Credit Loans, plus all amounts previously drawn on Letters of Credit but not yet funded as a Revolving Credit Loan pursuant to Section 4.05(b) or reimbursed.

(ii) Each of the Letters of Credit shall (A) be issued by the Bank, (B) contain such terms and provisions as are reasonably required by the Bank, (C) be for the account of the Company, and (D) with respect to standby Letters of Credit, expire not later than 390 days from the date of issuance and with respect to non-standby Letters of Credit, expire not later than 180 days from the date of issuance, unless prior approval of the Bank is obtained for a longer period, but in no event shall any Letter of Credit have an expiration date beyond the Drawdown Termination Date.

(iii) In conjunction with the issuance of a Letter of Credit, the Company shall execute a Letter of Credit Agreement. In the event of any conflict between any provision of a Letter of Credit Agreement and this Agreement, the Company and the Bank hereby agree that the provisions of this Agreement shall govern.

(d) **Special Purpose Credit Loans** - Upon the request of the Company as hereinafter provided, \$3,000,000 of the principal balance outstanding on the Original Notes shall be rearranged into an initial Special Purpose Credit Loan. On and after the date of the initial Special Purpose Credit Loan through the earlier of the date the Term Note is paid in full or the maturity of the Special Purpose Credit Note, the Company may reborrow principal amounts repaid from time to time on the Special Purpose Credit Note to the extent of the Special Purpose Credit Maximum Availability provided the proceeds of such reborrowing are used for Capital Expenditures.

2.02 Borrowings and Issuances.

(a) The Company shall give the Bank advance notice as hereinafter provided of each borrowing and each request for issuance of a Letter of Credit hereunder, which shall specify the aggregate amount of such Loan or such Letter of Credit and the date (which shall be a Business Day) of the Loans to be borrowed or the Letters of Credit to be issued and the beneficiary and other terms of such Letter of Credit, all of which (other than the beneficiary) must be reasonably acceptable to the Bank.

(b) All Loans (as part of the same borrowing) shall be in amounts of at least \$100,000 or any whole multiple of \$50,000 in excess thereof or the remaining unused portion of the applicable Commitment, as the case may be.

(c) All borrowings or requests for issuance of Letters of Credit shall require advance written notice to the Bank in the form of a Borrowing Request, which in each case shall be irrevocable, from the Company to be received by the Bank not later than 11:00 a.m. New York time on the date such Loan is to be obtained and one (1) Business Day prior to the date such Letter of Credit is to be issued.

(d) Not later than 2:00 p.m. New York time on the date specified for each borrowing hereunder, the Bank shall make available the amount of the Loan to be made

by it on such date to the Company by depositing the same, in immediately available funds, in an account of the Company, designated by the Company and maintained with the Bank at the Principal Office.

(e) Not later than 10:00 a.m. New York time on the date specified for the issuance of a Letter of Credit, the Bank shall make available to the Company at the Bank's Principal Office such Letter of Credit.

2.03 Changes of Commitments.

(a) The Company shall have the right to terminate or to reduce the amount of the Revolving Credit/Letter of Credit Commitment at any time or from time to time upon not less than two (2) Business Days prior notice to the Bank of such termination or each such reduction, which notice shall specify the effective date thereof and the amount of any such reduction (which shall be in amounts of at least \$100,000 or any whole multiple of \$50,000 in excess thereof) and shall be irrevocable and effective only upon receipt by the Bank.

(b) The Revolving Credit/Letter of Credit Commitment once terminated or reduced may not be reinstated.

2.04 Notes.

(a) The Term Loan made by the Bank shall be evidenced by a single promissory note of the Company in substantially the form of Exhibit A hereto, dated on or before the date such Term Loan is made, payable to the order of the Bank in a principal amount equal to the Term Loan Commitment and otherwise duly completed.

(b) The Revolving Credit Loans made by the Bank shall be evidenced by a single promissory note of the Company in substantially the form of Exhibit B hereto, dated on or before the date of the initial borrowing under this Agreement, payable to the order of the Bank in a principal amount equal to the Revolving Credit/Letter of Credit Commitment as originally in effect and otherwise duly completed.

(c) The Special Purpose Credit Loans made by the Bank shall be evidenced by a single promissory note of the Company in substantially the form of Exhibit B-2 hereto, dated on or before the date of the initial Special Purpose Credit Loan under this Agreement, payable to the order of the Bank in a principal amount equal to

the Special Purpose Credit Commitment and otherwise duly completed.

(d) The date and amount of each Loan made by the Bank, and all payments made on account of the principal thereof, shall be recorded by the Bank on its books for the applicable Note, and prior to any transfer of any Note held by it, endorsed by the Bank on the schedule attached to such Note or any continuation thereof.

2.05 Prepayments.

(a) The Company may prepay Loans at any time, provided such prepayment is made on or before 11:00 a.m. New York time and such prepayment is in an amount of at least \$100,000 or any whole multiple of \$50,000 in excess thereof or the remaining aggregate principal balance outstanding on the Notes and provided that interest on the principal prepaid, accrued to the prepayment date, shall be paid on the prepayment date.

(b) If, after giving effect to any termination or reduction of the Revolving Credit/Letter of Credit Commitment, pursuant to Section 2.03, the sum of (i) outstanding aggregate principal amount of the Revolving Credit Loans, (ii) the face amount of all outstanding Letters of Credit and (iii) all amounts previously drawn on Letters of Credit, but not yet funded as a Revolving Credit Loan pursuant to Section 4.05(b) or reimbursed, exceeds the amount of the Revolving Credit/Letter of Credit Commitment, then the Company shall on the date of such termination or reduction pay or prepay the amount of such excess for application first towards reduction of all amounts previously drawn, but not yet funded as a Revolving Credit Loan pursuant to Section 4.05(b) or reimbursed, and second, if necessary, towards reduction of the outstanding principal balance of the Revolving Credit Note and, third, if necessary, towards prepaying the amount of the Letters of Credit, which amount shall be held by the Bank as cash collateral to secure the Company's obligation to reimburse the Bank for drawings under the Letters of Credit, together with interest on such excess accrued to the date of such payment or prepayment.

(c) Mandatory Prepayments of Notes.

(i) Prior to the occurrence of the Trigger Date, the Company will apply on or before 30 days after the end of each month any Cash Flow remaining after the interest payments

required by Section 3.02 as a prepayment on the Term Note.

(ii) On and after the occurrence of the Trigger Date, the Company will apply on or before 30 days after the end of each month any Cash Flow remaining after the interest payments required by Section 3.02 as a prepayment on the Term Note until the principal of the Term Note is paid in full. After the principal of the Term Note is paid in full, the Company will then apply the aforesaid prepayment from Cash Flow on the Special Purpose Credit Note until the principal of the Special Purpose Credit Note is paid in full. After the principal of the Special Purpose Credit Note is paid in full, the Company will then apply the aforesaid prepayment from Cash Flow on the Revolving Credit Note until the principal of the Revolving Credit Note is paid in full. The amount of principal prepayments required by this Section 2.05(c)(ii) shall not exceed \$450,000 per calendar quarter.

(iii) On and after the occurrence of the Trigger Date, the Company will also apply on or before 30 days after the end of each month fifty percent (50%) of any Cash Flow remaining after the interest payments required by Section 3.02 and the prepayments required by Section 2.05 (c)(ii) (the "Excess Cash Flow"), as a prepayment on the Term Note until the principal of the Term Note is paid in full. After the principal of the Term Note is paid in full, the Company will then apply the aforesaid prepayment from Excess Cash Flow on the Special Purpose Credit Note until the principal of the Special Purpose Credit Note is paid in full. After the principal of the Special Purpose Credit Note is paid in full, the Company will then apply the aforesaid prepayment from Excess Cash Flow on the Revolving Credit Note until the principal of the Revolving Credit Note is paid in full. The remaining fifty percent (50%) of Excess Cash Flow shall be paid by the Company to Flying J Inc., as a consulting fee pursuant to the Consultation and Service Agreement.

(d) The Company will apply on or before 30 days after the end of each month the Unused Cap Ex Amount for

such month as a prepayment on the Special Purpose Credit Note.

(e) Prepayments permitted under this Section 2.05 shall be without premium or penalty, and shall be applied in inverse order of maturity.

Section 3. Payments of Principal and Interest.

3.01 Principal. The Company will pay to the Bank the principal of each Note when due. The principal amount of each Note outstanding on June 15, 2002 shall be due and payable on that date.

3.02 Interest.

(a) The Company will pay to the Bank interest on the unpaid principal amount outstanding from time to time of each Loan made by the Bank for the period commencing on the date of such Loan to, but excluding, the date such Loan shall be paid in full, at a varying rate per annum equal to the Prime Rate (as in effect from time to time), but in no event to exceed the lesser of nine percent (9%) per annum or the Highest Lawful Rate. Notwithstanding the foregoing, the Company will pay to the Bank interest at the applicable Post-Default Rate on any principal of any Loan made by the Bank, and (to the fullest extent permitted by law) on any other amount (including interest) payable by the Company hereunder or under any Note held by the Bank, which shall not be paid in full when due (whether at stated maturity, by acceleration or otherwise), for the period commencing on the due date thereof until the same is paid in full.

(b) Accrued interest on each Note (other than the Deferred Accrued Interest) shall be payable monthly on or before 30 days after the end of each month, commencing on September 30, 1992. The Deferred Accrued Interest shall be payable on the same date(s) the accrued interest described in the preceding sentence is paid until the Deferred Accrued Interest is paid in full. All accrued interest on the Notes (including the Deferred Accrued Interest) shall be payable by the Company from the Cash Flow. The Company shall apply the Cash Flow to the payment of interest as follows:

(i) first to the payment of all interest accrued on the Term Note during the month;

(ii) second to the payment of all interest accrued on the Special Purpose Credit Note during the month;

(iii) third to the payment of all interest accrued on the Revolving Credit Note during the month; and

(iv) fourth to the payment of any Deferred Accrued Interest.

(c) Promptly after the determination of any interest rate provided for herein or any change therein, the Bank shall notify the Company thereof.

Section 4. Payments; Computations; Etc.

4.01 Payments. Except to the extent otherwise provided herein, all payments of principal, interest and other amounts to be made by the Company under this Agreement, the Notes and the Letter of Credit Agreements shall be made in Dollars, in immediately available funds, to the Bank at such account as the Bank shall specify by notice to the Company from time to time, not later than 11:00 a.m. New York time on the date on which such payments shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). The Company shall, at the time of making each payment under this Agreement or any Note or any Letter of Credit Agreement, specify to the Bank the Loans, Letters of Credit or other amounts payable by the Company hereunder to which such payment is to be applied (and in the event that it fails to so specify, or if an Event of Default has occurred and is continuing, the Bank may distribute such payment in such manner as it may determine to be appropriate). If the due date of any payment under this Agreement or any Note or any Letter of Credit Agreement would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall be payable for any principal so extended for the period of such extension.

4.02 Computations. Interest and fees shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

4.03 Set-off The Company agrees that, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim the Bank may otherwise have, the Bank shall be entitled, at its option, to offset balances held by it for the account of the Company at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of the Bank's Loans, or any other amount payable to the Bank hereunder or under any Letter of Credit Agreement, which is not paid when due (regardless of whether such balances are then due to the Company),

in which case the Bank shall promptly notify the Company thereof, provided that the Bank's failure to give such notice shall not affect the validity thereof. Nothing contained herein shall require the Bank to exercise any such right or shall affect the right of the Bank to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Company.

4.04 Assumption of Risks. The Company assumes all risks of the acts or omissions of beneficiaries of any of the Letters of Credit with respect to its use of the Letters of Credit. Except in the case of gross negligence or willful misconduct on the part of the Bank or any of its employees, neither the Bank nor the Bank's correspondents shall be responsible for the validity or genuineness of certificates or other documents, even if such certificates or other documents should in fact prove to be invalid, fraudulent or forged; for errors, omissions, interruptions or delays in transmissions or delivery of any messages by mail, telex, or otherwise, whether or not they be in code; for errors in translation or for errors in interpretation of technical terms; or for any other consequences arising from causes beyond the Bank's control; nor shall the Bank be responsible for any error, neglect, or default of any of the Bank's correspondents; and none of the above shall affect, impair or prevent the vesting of any of the Bank's rights or powers hereunder or under the Letter of Credit Agreements, all of which rights shall be cumulative. The Bank and the Bank's correspondents may accept certificates or other documents that appear on their face to be in order, without responsibility for further investigation. In furtherance and not in limitation of the foregoing provisions, the Company agrees that any action, inaction or omission taken or not taken by the Bank or by any correspondent for the Bank in absence of gross negligence or willful misconduct by the Bank in connection with any Letter of Credit, or any related drafts, certificates, documents or instruments, shall be binding on the Company and shall not put the Bank or the Bank's correspondents under any resulting liability to the Company.

4.05 Obligation to Reimburse and to Prepay.

(a) If any draft or claim shall be presented for payment under a Letter of Credit, after confirming that such draft or claim complies with all requirements of the relevant Letter of Credit, the Bank shall promptly notify the Company verbally (confirming such notice promptly in writing) of the date and the amount of the draft or claim presented for payment.

(b) If a disbursement by the Bank is made under any Letter of Credit and no Default under this Agreement shall have occurred and be continuing, the Company may

elect to have the amount of such disbursement up to the amount of the Revolving Credit/Letter of Credit Commitment then available treated as a Revolving Credit Loan to the Company as provided in Subsection 2.01(b) hereof, subject to the terms and conditions set forth in this Agreement. With respect to any disbursement under a Letter of Credit for which no such election is made or after and during the continuance of a Default, the Company shall pay to the Bank immediately after notice of any such disbursement is received by the Company in federal or other immediately available funds, the amount of each such disbursement made by the Bank under the Letter of Credit (if such payment is not sooner effected as may be required hereunder or under other provisions of the Letter of Credit Agreement), together with interest on the amount disbursed from and including the date of disbursement until payment in full of such disbursed amount at a varying rate per annum equal to the Prime Rate (as in effect from time to time) plus two percent (2%) (but in no event to exceed the Highest Lawful Rate).

(c) The Company's obligation to make each such payment shall be absolute and unconditional and shall not be subject to any defense or be affected by any right of setoff, counterclaim or recoupment which the Company may now or hereafter have against any beneficiary of any Letter of Credit, the Bank, or any other Person for any reason whatsoever (but, without prejudice to any other provisions hereof, any such payment shall not waive, impair or otherwise adversely affect any claim, if any, that the Company may have against any beneficiary of a Letter of Credit, the Bank or any other Person).

(d) In the event of the occurrence of any Event of Default, upon request of the Bank, an amount equal to the entire remaining obligation of the Bank under each outstanding Letter of Credit shall be deemed to be forthwith due and owing by the Company to the Bank as of the date of any such occurrence; and the Company's obligation to pay such amount shall be absolute and unconditional, and without regard to whether any beneficiary of any such Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and shall not be subject to any defense or be affected by a right of setoff, counterclaim or recoupment which the Company may now or hereafter have against any such beneficiary, the Bank, or any other Person for any reason whatsoever (but, without prejudice to any other provisions hereof, any such payment shall not waive, impair or otherwise

adversely affect any claim, if any, that the Company may have against any beneficiary of a Letter of Credit, the Bank or any other Person). The Company hereby grants a security interest in any such amounts to the Bank as security for all Indebtedness now or hereafter owing hereunder. In the event of any such prepayment (or prepayment of Letters of Credit pursuant to Section 2.05) by the Company of amounts contingently owing under outstanding Letters of Credit and in the event that thereafter drafts or other demands for payment complying with the terms of such Letters of Credit are not made prior to the respective expiration dates thereof, the Bank agrees, if no Event of Default has occurred and is continuing or if no other amounts are outstanding under this Agreement, the Notes or the Security Instruments, to remit to the Company amounts for which the contingent obligations evidenced by such Letters of Credit have ceased.

Section 5. Increased Costs.

(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to the Bank (other than an increase relating to taxes) specifically relating to the Bank's agreeing to make or making, funding or maintaining Loans hereunder, then the Company shall from time to time, upon demand by the Bank, pay to the Bank additional amounts sufficient to compensate the Bank for such increased or imposed cost. A certificate as to the amount of such increased cost, submitted to the Company by the Bank, shall be conclusive and binding for all purposes, absent manifest error.

(b) If compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having force of law) affects or would affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank and the Bank determines that the amount of such capital is increased by or based upon the existence of (i) the Bank's commitment to lend or extend other credit by letter of credit or otherwise hereunder or (ii) the Bank's obligation on one or more letters of credit or other similar credit enhancements issued pursuant hereto, then the Company shall from time to time, upon demand by the Bank, pay to the Bank, additional amounts sufficient to compensate the Bank in

the light of such circumstances, to the extent that the Bank reasonably determines such increase in capital to be allocable to the existence of the Bank's commitment or obligation. A certificate in reasonable detail as to the basis for and the amount of such compensation submitted to the Company by the Bank, shall be conclusive and binding for all purposes, absent manifest error.

Section 6. Conditions Precedent.

6.01 Initial Loan or Letter of Credit.

The obligation of the Bank to renew, rearrange, modify and extend the Original Notes and to make the initial Loans hereunder is subject to the receipt by the Bank of the following documents and satisfaction of the other conditions provided in this Section 6.01 and as called for, Sections 6.02 and 6.03, each of which shall be satisfactory to the Bank in form and substance:

(a) Certificates of the Secretary or Assistant Secretary of the Company and of the Calciner Operating Subsidiary setting forth (i) resolutions of its board of directors in form and substance satisfactory to the Bank with respect to the authorization of the Notes, this Agreement and the other Security Instruments provided herein, (ii) the officers of the Company and of the Calciner Operating Subsidiary (y) who are authorized to sign this Agreement, the Notes, and the other Security Instruments and (z) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the transactions contemplated hereby, (iii) specimen signatures of the officers so authorized, and (iv) that the articles or certificates of incorporation and the bylaws of the Company and the Calciner Operating Subsidiary have not been amended since June 3, 1992. The Bank may conclusively rely on such certificates until the Bank receives notice in writing from the Company or the Calciner Operating Subsidiary, as the case may be, to the contrary.

(b) Certificates of the appropriate state agencies with respect to the valid existence and good standing of the Company and of the Calciner Operating Subsidiary.

(c) A compliance certificate which shall be true and correct in all material respects and in the form of Exhibit C, duly and properly executed by an executive

officer of the Company, and dated as of the date of the initial borrowing.

(d) The Notes, duly completed and executed.

(e) The Security Instruments listed on Exhibit F hereto, duly completed and executed in sufficient number of counterparts for recording.

(f) An opinion of Messrs. Bracewell & Patterson, counsel to the Company and the Calciner Operating Subsidiary, substantially in the form of Exhibit E hereto.

(g) An original Consultation and Service Agreement executed by the parties thereto.

(h) An original of the Option Agreement (CPI) executed by the parties thereto.

(i) An original of the Option Agreement (Chase) executed by the parties thereto.

(j) Such other documents as the Bank or special counsel to the Bank may reasonably request.

6.02 Conditions Relating to Letters of Credit. In addition to the satisfaction of all other conditions precedent set forth in this Section 6, the issuance, renewal, extension or reissuance of the Letters of Credit referred to in Section 2.02(c) is subject to the following conditions precedent:

(a) At least one (1) Business Days prior to the date of the issuance, renewal, extension or reissuance of each Letter of Credit, the Bank shall have received a Borrowing Request for a Letter of Credit.

(b) The Company shall have duly and validly executed and delivered to the Bank a Letter of Credit Agreement pertaining to the Letter of Credit.

6.03 Initial and Subsequent Loans. The obligation of the Bank to make Loans to the Company upon the occasion of each borrowing hereunder, or of the Bank to issue Letters of Credit (including the initial borrowing) is subject to the further conditions precedent that, as of the date of such Loans or issuance of Letters of Credit and after giving effect thereto: (i) no Default shall have occurred and be continuing; (ii) no condition causing a Material Adverse Effect shall have occurred and be continuing; and (iii) the representations and warranties made by the Company in Section 7 shall be true in all material respects on

and as of the date of the making of such Loans or the issuance of such Letter of Credit with the same force and effect as if made on and as of such date and following such new borrowing, except as such representations and warranties are modified to give effect to transactions expressly permitted hereby. Each request for a borrowing or request for the issuance, renewal, extension or reissuance of a Letter of Credit by the Company hereunder shall constitute a certification by the Company to the effect set forth in the preceding sentence (both as of the date of such notice and, unless the Company otherwise notifies the Bank prior to the date of and immediately following such borrowing, as of the date thereof).

Section 7. Representations and Warranties. The Company represents and warrants to the Bank that (each representation and warranty herein is given as of the date of this Agreement and shall be deemed repeated and reaffirmed on the dates provided in Section 6.03):

7.01 Corporate Existence. The Company and each Subsidiary: (a) is a corporation duly organized, legally existing, and in good standing under the laws of the jurisdiction of its incorporation; (b) has all requisite corporate power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would have a Material Adverse Effect.

7.02 Financial Condition.

(a) The audited consolidated and consolidating statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for the Company's fiscal year ended September 30, 1991, and the related consolidated and consolidating balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, and the unaudited consolidated and consolidating statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for the period ending April 30, 1992, and the related consolidated and consolidating balance sheet as at the end of such period heretofore furnished to the Bank, are complete and correct and fairly present the financial condition of the Company and its Subsidiaries and the results of operations of the Company and its Subsidiaries as at said date or dates and for the period or periods stated (subject only to normal year-end audit adjustments with respect to such unaudited interim statements), all in

accordance with generally accepted accounting principles and practices applied on a consistent basis.

(b) Neither the Company nor any Subsidiary had, on the date set forth above, any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in such financial statements as at said respective dates or in Schedule 7.02(b) hereto. Since April 30, 1992, there has been no change or event having a Material Adverse Effect.

7.03 Liabilities; Litigation. Except for liabilities incurred in the normal course of business and those permitted hereby, neither the Company nor any Subsidiaries has any material (individually or in the aggregate) liabilities, direct or contingent, except as disclosed or referred to in the Financial Statements or as disclosed to the Bank in Schedule 7.03 or Schedule 7.16 hereto. At the date of this Agreement, there is no litigation, legal, administrative or arbitral proceeding, investigation or other action of any nature pending or, to the knowledge of the Company threatened against or affecting the Company or any Subsidiary which could reasonably be expected to result in a judgment or liability not fully covered by insurance, and which would have a Material Adverse Effect. No unusual and unduly burdensome restriction, restraint, or hazard exists by contract, law or governmental regulation or otherwise relative to the business or Properties of the Company or any Subsidiary, except as disclosed to the Bank in Schedule 7.03 or Schedule 7.16 hereto.

7.04 No Breach. Neither the execution and delivery by the Company or any Subsidiary of this Agreement, the Notes, or the other Security Instruments to which it is a party, nor compliance with the terms and provisions hereof by the Company or any Subsidiary will conflict with or result in a breach of, or require any consent under, the respective charter or by-laws of the Company or any Subsidiary, or (other than actions required to maintain compliance with Section 8.03(a)) any law or regulation applicable to the Company or any Subsidiary, or any order, writ, injunction or decree applicable to the Company or any Subsidiary of any court or governmental authority or agency, or any agreement or instrument to which the Company or any Subsidiary is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any of the revenues or assets of the Company or any Subsidiary pursuant to the terms of any such agreement or instrument.

7.05 Corporate Action. Each of the Company and the Subsidiaries has all necessary corporate power and authority to

execute, deliver and perform its obligations under this Agreement, the Notes, or the other Security Instruments to which it is a party; and the execution, delivery and performance by each of the Company and the Subsidiaries of this Agreement, the Notes, or the other Security Instruments to which it is a party have been duly authorized by all necessary corporate action on its part; and this Agreement, the Notes and the Security Instruments constitute the legal, valid and binding obligations of each of the Company and the Subsidiaries to the extent they are respectively parties thereto, enforceable in accordance with their terms, subject to bankruptcy, insolvency, moratorium and other similar laws affecting generally the rights of creditors and to principles of equity.

7.06 Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by the Company or any Subsidiary of this Agreement, the Notes, or the Security Instruments to which it is a party or for the validity or enforceability thereof against the Company or such Subsidiary other than such actions required to maintain compliance with Section 8.03(a) and such filings as are required to properly perfect and record the Liens created by the Security Instruments.

7.07 Use of Loans. The proceeds of the Term Loan and the initial Special Purpose Credit Loan shall be used to renew, rearrange, modify and extend the indebtedness evidenced by the Original Notes, and the proceeds of the Revolving Credit Loans shall be used for working capital or other general corporate purposes of the Company. The proceeds of all Special Purpose Credit Loans other than the initial Special Purpose Credit Loan shall be used for Capital Expenditures. Neither the Company nor any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation U or X of the Board of Governors of the Federal Reserve System) and no part of the proceeds of any Loan hereunder will be used to buy or carry any margin stock.

7.08 ERISA. Each of the Company, the Subsidiaries and the ERISA Affiliates have fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and are in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and do not have any liability (other than current required payments to the Plan) to the PBGC or any Plan or Multiemployer Plan.

7.09 Taxes. The Company and its Subsidiaries have at the date of this Agreement filed all United States Federal income tax returns and all other material tax returns which are required

to be filed and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company or any Subsidiary. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of taxes and other governmental charges are, in the opinion of the Company, adequate.

7.10 Titles, etc. The Company and its Subsidiaries have good and defensible title to their respective material (individually or in the aggregate) Properties, free and clear of all Liens except Excepted Liens, Liens permitted by Section 9.02, and Liens disclosed to the Bank in Schedule 7.10.

7.11 No Material Misstatements. No information, statement, exhibit, certificate, document or report furnished to the Bank by the Company or any Subsidiary in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statement contained therein not materially misleading which fact or statement could reasonably be expected to have a material effect on the Bank's decision to enter into this Agreement.

7.12 Investment Company Act. Neither the Company nor any Subsidiary is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

7.13 Public Utility Holding Company Act. The Company is not a "holding company," or a "subsidiary company" of a "registered holding company," or an "affiliate" of a "registered holding company" or of a "subsidiary company" of a "registered holding company," or a "public utility" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

7.14 Subsidiaries and Partnerships. As of the date of this Agreement, the Company has no Subsidiaries (except those identified in Section 9.03 hereof) and no interest in any partnerships.

7.15 Location of Business and Offices. As of the date of this Agreement, the Company's principal place of business and chief executive office are located at the addresses stated on the signature page of this Agreement.

7.16 Environmental Matters. Except as provided in Schedule 7.16 and except as would not have a Material Adverse Effect (or with respect to (c), (d), and (e) below, where the failure to take such actions would not have such a Material Adverse Effect):

(a) Neither any Mortgaged Properties nor any other Properties owned by the Company or any Subsidiary nor the

operations conducted thereon violate any Environmental Laws or the order of any court or Governmental Authority with respect to Environmental Laws;

(b) Without limitation of clause (a) above, neither the Mortgaged Properties nor any other Properties owned by the Company or any Subsidiary nor the operations currently conducted thereon or by any prior owner or operator of such Property or operation, are subject to any existing, pending or (to the knowledge of the Company) threatened action, suit, investigation, inquiry or proceeding by or before any court or Governmental Authority with respect to Environmental Laws or to any remedial obligations under Environmental Laws;

(c) All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed by the Company or any Subsidiary in connection with the operation or use of any and all Mortgaged Properties and other Property of the Company or any Subsidiary, including without limitation, the treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been duly obtained or filed;

(d) Since the inception of the applicable requirements of RCRA, all hazardous wastes generated at any and all Mortgaged Property and other Property of the Company or any Subsidiary and requiring disposal have been transported only by carriers then maintaining valid authorizations under RCRA and any other Environmental Law and treated and disposed of only at treatment, storage and disposal facilities then maintaining valid authorizations under RCRA and any other Environmental Law, which carriers and facilities to the knowledge of the Company have been and are operating in compliance with such authorizations;

(e) The Company has taken the steps outlined in Schedule 7.16 to make a reasonable determination that no hazardous substances or solid waste have been disposed of or otherwise released and that there has been no threatened release of any hazardous substances on or to any Mortgaged Property or other Property of the Company or any Subsidiary except in compliance with Environmental Laws; and

(f) Neither the Company nor any Subsidiary has any material contingent liability in connection with any release or threatened release of any hazardous substance,

solid waste or oil and gas exploration and production waste into the environment.

7.17 Mortgaged Property. The Security Instruments delivered cover substantially all material Property of the Company and of the Calciner Operating Subsidiary.

7.18 Defaults.

(a) After giving effect to the transactions called for in Section 6.01, neither the Company nor any Subsidiary is in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default (in any respect which would have a Material Adverse Effect) under any material agreement or other instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound. No Default hereunder has occurred and is continuing.

(b) The Bank hereby waives all defaults and events of default under the Subordinated Debt existing on the date of this Agreement. Nothing in this Section 7.18(b) shall be construed to be a waiver by the Bank of any default or event of default which may occur after the date of this Agreement.

7.19 Compliance with the Law. Except for environmental matters covered by Section 7.16, neither the Company nor any Subsidiary has violated any Governmental Requirement nor failed to obtain any license, permit, franchise or other governmental authorization necessary for the ownership of any of their respective Properties or the conduct of their respective businesses, which violation or failure would have (in the event such violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect.

Section 8. Affirmative Covenants. The Company agrees that, so long as any of the Commitments are in effect and until payment in full of all Indebtedness, all interest thereon and all other amounts payable by the Company hereunder:

8.01 Financial Statements. The Company shall deliver, or shall cause to be delivered, to the Bank:

(a) As soon as available and in any event within 90 days after the end of each fiscal year of the Company, the audited consolidated and consolidating statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for such fiscal year, and the related consolidated and consolidating balance sheet

of the Company and its Subsidiaries as at the end of such fiscal year, and commencing on September 30, 1992, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, and accompanied by the related opinion of KPMG Peat Marwick or other independent public accountants of recognized national standing reasonably acceptable to the Bank which opinion shall state that said consolidated financial statements fairly present the financial condition and results of operations of the Company and its Subsidiaries as at the end of, and for, such fiscal year.

(b) As soon as available and in any event within 30 days after the end of each of the first three (3) fiscal quarterly periods of each fiscal year of the Company, consolidated and consolidating statements of income, stockholders' equity and cash flows of the Company and its Subsidiaries for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated and consolidating balance sheet as at the end of such period, and commencing December 31, 1992, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, accompanied by the certificate of the senior financial officer of the Company, which certificate shall state that said financial statements fairly present the financial condition and results of operations of the Company and its Subsidiaries in accordance with generally accepted accounting principles, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments).

(c) As soon as possible, and in any event within 30 days of the end of each calendar month, consolidated and consolidating financial statements of the Company and its Subsidiaries for each such month in form and substance reasonably acceptable to the Bank.

(d) As soon as available and in any event within 30 days after the end of each fiscal quarterly period of each fiscal year of the Company, the Environmental Compliance Certificate of a responsible officer of the Company in the form of Exhibit D, certifying for such quarterly period either that (i) the Properties and operations of the Company and its Subsidiaries are in compliance with the provisions of Section 9.13, or, (ii) if the Company or any Subsidiary is not in compliance with Section 9.13, providing detail in form and substance satisfactory to the Bank as to the nature

of such non-compliance and what action the Company or such Subsidiary has taken or proposes to take with respect thereto.

(e) As soon as possible, and in any event within ten days after the Company knows that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan have occurred or exist, a statement signed by a senior financial officer of the Company setting forth details respecting such event or condition and the action, if any, which the Company, its Subsidiaries or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by the Company, its Subsidiaries or an ERISA Affiliate with respect to such event or condition):

(i) any reportable event, as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code);

(ii) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan;

(iii) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any Subsidiary or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;

(iv) the complete or partial withdrawal by the Company or any Subsidiary or any ERISA Affiliate under Section 4201 or 4204 of ERISA from a Multiemployer Plan, or the receipt by the Company or any Subsidiary or any ERISA Affiliate of notice from a Multiemployer Plan that is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA; and

(v) the institution of a proceeding by a fiduciary of any Multiemployer Plan against the Company or any Subsidiary or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days.

(f) Promptly after the Company knows of the occurrence of any Event of Default, a notice of such Event of Default, describing the same in reasonable detail.

(g) From time to time such other information regarding the business, affairs or financial condition of the Company and its Subsidiaries (including, without limitation, any Plan or Multiemployer Plan and any reports or other information required to be filed under ERISA) as the Bank may reasonably request.

The Company will furnish to the Bank, at the time it furnishes each set of financial statements pursuant to paragraph (a) or (b) above, a certificate of a senior financial officer of the Company (i) to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail) and (ii) setting forth in reasonable detail the computations necessary to determine whether the Company and its Subsidiaries are in compliance with Section 9.12 as of the end of the respective fiscal quarter or calendar year.

8.02 Litigation. The Company, once it has notice, shall promptly give to the Bank notice of all legal or arbitral proceedings, and of all proceedings before any Governmental Authority, affecting the Company or any Subsidiary, except proceedings which, if adversely determined, would not reasonably be expected to have a Material Adverse Effect.

8.03 Corporate Existence, Etc.

(a) The Company shall and shall cause each Subsidiary to: preserve and maintain its corporate existence and all of its material rights, privileges and franchises except as provided by Section 9.08; keep books of record and account in which full, true and correct entries will be made of all dealings or transactions in relation to its business and activities; comply with the requirements of all applicable laws, rules, regulations and orders of governmental or regulatory authorities if failure to comply with such requirements would have a Material Adverse Effect; pay and discharge all material taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach

thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained; and permit representatives of the Bank, during normal business hours, to examine, copy and make extracts from its books and records, to inspect its Properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by the Bank.

(b) The Company shall and shall cause each Subsidiary to keep insured by financially sound and reputable insurers all Property of a character usually insured by corporations engaged in the same or similar business similarly situated against loss or damage of the kinds and in the amounts customarily insured against by such corporations and carry such other insurance as is usually carried by such corporations. Upon request of the Bank, the Company will furnish or cause to be furnished to the Bank from time to time a summary of the insurance coverage of the Company and its Subsidiaries in form and substance reasonably satisfactory to the Bank and if requested will furnish the Bank copies of the applicable policies. In the case of any fire, accident or other casualty causing loss or damage to any material Properties of the Company, the proceeds of such policies shall be used, if such loss or damage is material (i) to repair or replace the damaged Property, or (ii) to prepay the Indebtedness. The Company will obtain endorsements to the policies pertaining to all physical Properties in which the Bank shall have a Lien under the Security Instruments, naming the Bank as a loss payee and containing provisions that such policies will not be cancelled without 30 days' prior written notice having been given by the insurance company to the Bank.

(c) The Company will and will cause each Subsidiary to, at its own expense, do or cause to be done all things reasonably necessary to preserve and keep in good repair, working order and efficiency all of the material Properties owned by the Company and its Subsidiaries including, without limitation, all material equipment, machinery and facilities, and from time to time will make all the reasonably necessary repairs, renewals and replacements so that at all times the state and condition of the material Properties owned by the Company and its Subsidiaries will be fully preserved and maintained. The Company will operate its material Properties or cause or use its best efforts to cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance in

all material respects with all applicable contracts and agreements and in compliance in all material respects with all Governmental Requirements. Nothing herein shall prevent the Company from discontinuing the operation, maintenance or repair or from failing to renew or replace any of its Properties, if such Property is not of material value and is otherwise not material in the operation of the Company.

8.04 Further Assurances. The Company will and will cause each Subsidiary to cure promptly any defects in the creation and issuance of the Notes and the execution and delivery of the Security Instruments, including this Agreement. The Company at its expense will and will cause each Subsidiary to promptly execute and deliver to the Bank upon request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of the Company or any Subsidiary in the Security Instruments, including this Agreement, or to further evidence and more fully describe the collateral intended as security for the Notes, or to correct any omissions in the Security Instruments, or more fully state the security obligations set out herein or in any of the Security Instruments, or to perfect, protect or preserve any Liens created pursuant to any of the Security Instruments, or to make any recordings, to file any notices, or to use its best efforts to obtain any consents, all as may be necessary or appropriate in connection therewith.

8.05 Performance of Obligations. The Company will pay the Notes according to the reading, tenor and effect thereof; and the Company will and will cause each Subsidiary to do and perform every act and discharge all of the obligations provided to be performed and discharged by the Company or any Subsidiary under the Security Instruments, including this Agreement, at the time or times and in the manner specified.

8.06 Calciner Agreement. The Company will and will cause the Calciner Operating Subsidiary to perform in all material respects all obligations to be performed by it under the Calciner Operating Agreement and maintain said agreement in full force and effect and will take such action as is necessary to keep the prior Liens of the U.S. Small Business Administration encumbering the Calciner current. The Company will and will cause the Calciner Operating Subsidiary to promptly notify the Bank of any default known to the Company or the Calciner Operating Subsidiary, as the case may be, in the prior Liens on the Calciner.

8.07 Consultation and Service Agreement. The Company will perform in all material respects all obligations to be performed by the Company under the Consultation and Service Agreement pursuant to the terms thereof.

8.08 Option Agreement (CPI). The Company will perform in all material respects all obligations to be performed by the Company under the Option Agreement (CPI) pursuant to the terms thereof. The Company shall not enter into any amendment or supplement to the Option Agreement (CPI) without the prior written consent of the Bank.

Section 9. Negative Covenants. The Company agrees that, so long as any of the Commitments are in effect and until payment in full of the Indebtedness, all interest thereon and all other amounts payable by the Company hereunder:

9.01 Debt. Neither the Company nor any Subsidiary will incur, create, assume or suffer to exist any Debt, including, without limitation, the guarantee of the Debt of any other Person, except:

(a) the Notes or other Indebtedness;

(b) Debt of the Company and its Subsidiaries existing on the date of this Agreement which is reflected in the Financial Statements or is disclosed in Schedule 9.01, and any renewals and extensions (but not increases) thereof;

(c) accounts payable (for the deferred purchase price of Property or services) from time to time incurred in the ordinary course of business and which, if greater than 90 days past the invoice or billing date, are being contested in good faith by the Company or its Subsidiary, as the case may be;

(d) the Subordinated Debt;

(e) obligations incurred in connection with surety and performance bonds purchased in the ordinary course of business; and

(f) intercompany Debt permitted by Section 9.03(b).

9.02 Liens. Neither the Company nor any Subsidiary will create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the payment of any Indebtedness;

(b) Excepted Liens;

(c) Liens existing on Property owned by the Company or any Subsidiary on the date of this Agreement which have been disclosed to the Bank in Schedule 7.10, and any renewals and extensions thereof; and

(d) Liens securing the Subordinated Debt.

9.03 Investments, Loans and Advances. Neither the Company nor any Subsidiary will make or permit to remain outstanding any loans or advances to or investments in any Person, except that the foregoing restriction shall not apply to:

(a) investments, loans or advances reflected in the Financial Statements or which are disclosed to the Bank in Schedule 9.03; and

(b) the investments in the Calciner Operating Subsidiary and in Landmark Resources Inc. on the date hereof as reflected in the Financial Statements.

9.04 Dividends, Distributions and Redemptions. The Company will not declare or pay any dividend, purchase, redeem or otherwise acquire for value any of its stock now or hereafter outstanding, return any capital to its stockholders, or make any distribution of its assets to its stockholders; provided, however, so long as no Default exists, the Company may redeem its stock so long as the total cost to the Company of such redemptions does not exceed \$1,000.00 in the aggregate.

9.05 Sales and Leasebacks. Neither the Company nor any Subsidiary will enter into any arrangement, directly or indirectly, with any Person whereby the Company or any Subsidiary shall sell or transfer any Property whether now owned or hereafter acquired, and whereby the Company or any Subsidiary shall then or thereafter rent or lease as lessee such Property or any part thereof or other Property which the Company or any Subsidiary intends to use for substantially the same purpose or purposes as the Property sold or transferred.

9.06 Nature of Business. The Company will not allow any material change to be made in the character of its principal business of owning and operating the Western Slope Properties.

9.07 Limitation on Leases. Neither the Company nor any Subsidiary will create, incur, assume or suffer to exist any obligation for the payment of rent or hire of Property of any kind whatsoever (real or personal), under leases or lease agreements which would cause the aggregate amount of all payments made by the Company and its Subsidiaries (determined on a consolidated basis) pursuant to such leases or lease agreements to exceed \$750,000 in any period of twelve consecutive calendar months.

9.08 Mergers, Etc. The Company will not merge into or with or consolidate with any other Person, or sell, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or any substantial part of its Property or assets to any other Person, or permit any Subsidiary to do so; provided, however, any Subsidiary may be merged into the Company with the Company being the surviving corporation, provided such merger will not create a Default hereunder.

9.09 Proceeds of Notes. The Company will not permit the proceeds of the Notes to be used for any purpose other than those permitted by Section 7.07.

9.10 ERISA Compliance. The Company and the Subsidiaries will not at any time permit any Plan maintained by it to:

(a) engage in any "prohibited transaction" as such term is defined in Section 4975 of the Code;

(b) Except as provided in Schedule 9.10, incur any "accumulated funding deficiency" in excess of \$100,000 as such term is defined in Section 302 of ERISA; or

(c) terminate any such Plan in a manner which could result in the imposition of a Lien on the Property of the Company or any Subsidiary pursuant to Section 4068 of ERISA.

9.11 Sale or Discount of Receivables. Neither the Company nor any Subsidiary will discount (except pursuant to standard industry terms in the ordinary course of business) or sell (with or without recourse) any of its notes receivable or accounts receivable.

9.12 Current Ratio. The Company will not permit its ratio of (i) current assets to (ii) current liabilities to be less than 1.0 to 1.0 at the end of any fiscal quarter. As used in this Section, current assets shall include unused credit availability under the Revolving Credit/Letter of Credit Commitment and the Special Purpose Credit Commitment and current liabilities will not include current maturities of Debt permitted under Section 9.01 other than Section 9.01(c).

9.13 Environmental Matters. Except for those pre-existing matters disclosed on Schedule 7.16, neither the Company nor any Subsidiary will cause or permit any of its Property to be in violation of, or do anything or permit anything to be done which will subject any such Property to any remedial obligations (other than customary closure obligations) under any Environmental Laws, assuming disclosure to the applicable Governmental Authority

of all relevant facts, conditions and circumstances, if any, pertaining to such Property, except for any such violations or remedial obligations (individually or in the aggregate) which would not have a Material Adverse Effect. The Company will establish and implement such procedures as may be necessary to determine and provide reasonable assurance, consistent with generally accepted industry standards and practices and any applicable Environmental Laws, that (i) except for integral Refinery operations where adequate reserves or other financial assurances have been established to cover all such closure or cleanup obligations, no solid wastes are disposed of on any Property owned by the Company or any Subsidiary in quantities or locations that would require remedial action under any Environmental Laws, (ii) no hazardous substance will be released on or to any such Property except in compliance with Environmental Laws, (iii) no hazardous substance is released on or to any such Property so as to pose an imminent and substantial endangerment to public health or welfare or the environment; (iv) all hazardous wastes generated by the Company or any Subsidiary or on any Property of the Company or any Subsidiary and requiring disposal will be transported only by carriers maintaining valid RCRA authorizations and treated, stored, and disposed of only by facilities operating in compliance with RCRA, and (v) the Company and the Subsidiaries and their respective Property and operations will maintain and operate in compliance with all permits, licenses, and similar authorizations required pursuant to any Environmental Laws. The Company covenants and agrees to, and will cause its Subsidiaries to, take any remedial action required on its Property under any Environmental Laws promptly upon discovery of such remedial obligations.

9.14 Transactions with Affiliates. Neither the Company nor any Subsidiary shall enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate unless such transactions are in the ordinary course of the Company's or Subsidiary's business, are upon fair and reasonable terms no less favorable to the Company or Subsidiary than it would obtain in a comparable arm's length transaction with a Person not an Affiliate and are not prohibited by this Agreement.

9.15 Subordinated Debt. The Company will neither prepay nor amend the Subordinated Debt.

Section 10. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur and be continuing:

(a) The Company shall default in the payment when due of any principal of any Loan or of any reimbursement obligations for disbursements made under any Letter of Credit; or

(b) The Company shall default in the payment when due of (i) interest for any three calendar months in any twelve (12) month period or (ii) any fees or other amount payable by it hereunder and not described in (a) above and such default shall continue unremedied for 3 Business Days; or

(c) The Company shall default in the payment when due of any principal of or interest on any of its other Debt incurred after the date hereof in an amount in excess of \$100,000; or any event specified in any note, agreement, indenture or other document evidencing or relating to any such Debt shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such Debt (or a trustee or agent on behalf of such holder or holders) to cause, such Debt to become due prior to its stated maturity; or

(d) Any representation, warranty or certification made or deemed made herein or in any other Security Instrument by the Company or any Subsidiary, or any certificate furnished to the Bank pursuant to the provisions hereof or any other Security Instrument, shall prove to have been false or misleading as of the time made or furnished in any material respect; or

(e) The Company shall default in the performance of any of its obligations under Section 9 (except Section 9.13); or

(f) The Company shall default in the performance of any of its other obligations in this Agreement, other than its obligations under Section 9 (with the exception of Section 9.13), and such default shall continue unremedied for a period of 30 days after notice thereof to the Company by the Bank; or

(g) The Company shall admit in writing its inability to, or be generally unable to, pay its debts as such debts become due; or

(h) The Company shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its Property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (iv) file a petition seeking to take advantage of any other law

relating to its bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of its debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code, or (vi) take any corporate action for the purpose of effecting any of the foregoing; or

(i) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the Company or of all or any substantial part of its assets, or (iii) similar relief in respect of the Company under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 days; or an order for relief against the Company shall be entered in an involuntary case under the Federal Bankruptcy Code; or

(j) A final judgment or judgments for the payment of money in excess of \$100,000 in the aggregate shall be rendered by a court or courts against the Company and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within 30 days from the date of entry thereof and the Company shall not, within said period of 30 days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal; or

(k) An event or condition specified in Section 9.10 shall occur or exist with respect to any Plan or Multiemployer Plan and, as a result of such event or condition, together with all other such events or conditions, the Company or any Subsidiary or any ERISA Affiliate shall incur or in the opinion of the Bank shall be reasonably likely to incur a liability to a Plan, a Multiemployer Plan or PBGC (or any combination of the foregoing) which is, in the determination of the Bank, material in relation to the financial position of the Company; or

(l) The Company or any Subsidiary shall default in the due observance or performance of any of the covenants or agreements contained in any Security Instrument other than this Agreement, and such default shall continue unremedied for a period of 30 days after notice thereof to the Company or such Subsidiary by the Bank; or

(m) Except as otherwise permitted in Section 9.04, any stockholder of the Company shall transfer stock in the Company to any Person other than a Person who is a stockholder in the Company on the date hereof other than transfers to heirs by reason of death; or

(n) Any Subsidiary takes, suffers or permits to exist as to such Subsidiary any of the events or conditions referred to in clause (g), (h), (i) or (j) of this Section 10; or

(o) The Company shall default in the due observance or performance of any of the Company's agreements or obligations contained in the Consultation and Service Agreement and such default shall continue unremedied beyond the expiration of any applicable grace period therein provided, or the Consultation and Service Agreement shall have terminated; or

(p) The Option Agreement (CPI) after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with its terms;

THEREUPON: (i) in the case of an Event of Default other than one referred to in clause (g), (h) or (i) of this Section 10, or in clause (n) of this Section 10 to the extent that such clause refers to such clauses (g), (h) or (i), the Bank shall, by notice to the Company, cancel the Commitments and/or declare the principal amount then outstanding of and the accrued interest on the Loans and all other amounts payable by the Company hereunder and under the Notes to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other formalities of any kind, all of which are hereby expressly waived by the Company; and (ii) in the case of the occurrence of an Event of Default referred to in clause (g), (h) or (i) of this Section 10, or in clause (n) of this Section 10 to the extent that such clause refers to such clauses (g), (h) or (i), the Commitments shall be automatically cancelled and the principal amount then outstanding of, and the accrued interest on, the Loans and all other amounts payable by the Company hereunder and under the Notes

shall become automatically immediately due and payable without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other formalities of any kind, all of which are hereby expressly waived by the Company.

Section 11. Miscellaneous.

11.01 Waiver. No failure on the part of the Bank to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement or any Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

11.02 Notices. All notices and other communications provided for herein and in the other Security Instruments (including, without limitation, any modifications of, or waivers or consents under, this Agreement or the other Security Instruments) shall be given or made by telex, telecopy, telegraph, cable or in writing and telexed, telecopied, telegraphed, cabled, mailed or delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof or in the other Security Instruments; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement or in the other Security Instruments, all such communications shall be deemed to have been duly given when transmitted by telex or telecopier, delivered to the telegraph or cable office or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

11.03 Payment of Expenses, Indemnities, etc. The Company agrees to:

(a) whether or not the transactions hereby contemplated are consummated, pay all reasonable expenses of the Bank in the administration (both before and after the execution hereof and including advice of counsel as to the rights and duties of the Bank with respect thereto) of, and in connection with the negotiation, investigation, preparation, execution and delivery of, recording or filing of, preservation of rights under, enforcement of, and refinancing, renegotiation or restructuring of, this Agreement, the Notes, the Letters of Credit, the Letter of Credit Agreements and the other Security Instruments and any amendment, waiver or consent relating thereto (including, without limitation, the reasonable fees and disbursements of counsel for the

Bank); and promptly reimburse the Bank for all amounts expended, advanced or incurred by the Bank to satisfy any obligation of the Company under this Agreement, the Letters of Credit, the Letter of Credit Agreements or any Security Instrument;

(b) pay and hold the Bank harmless from and against any and all present and future stamp and other similar taxes with respect to the foregoing matters and save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes; and

(c) indemnify the Bank, its officers, directors, employees, representatives, agents and affiliates from, hold each of them harmless against, promptly upon demand pay or reimburse each of them for, and refrain from creating or asserting against any of them, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), claims, demands, causes of action, costs, losses, liabilities, damages or expenses of any kind or nature whatsoever regardless of whether foreseeably caused by the ordinary negligence of the Bank (collectively the "Indemnity Matters") which may be incurred by or asserted against or involve any of them (whether or not any of them is designated a party thereto) as a result of, arising out of or in any way related to (i) any actual or proposed use by the Company of the proceeds of any of the Loans or Letters of Credit or (ii) any other aspect of this Agreement, the Notes, the Letters of Credit, the Letter of Credit Agreements and the other Security Instruments, including, without limitation, the reasonable fees and disbursements of counsel and all other expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including any investigations, litigation or inquiries) or claim, but excluding from this clause (ii) all Indemnity Matters to the extent resulting from claims between the Bank and a Bank shareholder or from the gross negligence or willful misconduct on the part of the Bank; and

(d) indemnify and hold the Bank, its officers, directors, employees, representatives, agents and affiliates harmless against, promptly to pay on demand or reimburse each of them with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses regardless of whether foreseeably caused by the ordinary negligence of the Bank of any and every kind or nature whatsoever asserted against or incurred by any of them by reason of or

arising out of or in any way related to (i) the breach of any representation or warranty as set forth herein regarding Environmental Laws, or (ii) the failure of the Company to perform any obligation required to be performed pursuant to Environmental Laws. The foregoing indemnity shall not apply with respect to matters caused by or arising out of the sole negligence, sole gross negligence or sole willful misconduct of the Bank. The Bank shall give notice to the Company of any such claim or demand being made against the Bank and the Company shall have the non-exclusive right to join in the defense against any such claim or demand.

11.04 Amendments, Etc. Any provision of this Agreement or any other Security Instrument may be amended, modified or waived if, but only if, such amendment, modification or waiver is in writing and is signed by the Company (and/or any other Person which is a party to any Security Instrument being amended or with respect to which a waiver is begin obtained) and the Bank.

11.05 Successors and Assigns. All covenants and agreements contained by or on behalf of the Company or any Subsidiary in the Notes, this Agreement and any other Security Instrument shall bind its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. The Company shall not, however, have the right to assign its rights under this Agreement, any Letter of Credit Agreement, or any interest herein or therein, without the prior written consent of the Bank. In the event that the Bank sells participations in the Notes or other Indebtedness of the Company incurred or to be incurred pursuant to the Agreement or any Letter of Credit Agreement, to other lenders, each of such other lenders shall have the rights of set off against such Indebtedness and similar rights or Liens to the same extent as may be available to the Bank.

11.06 Invalidity. In the event that any one or more of the provisions contained in the Notes, this Agreement or in any other Security Instrument shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Notes, this Agreement or any other Security Instrument.

11.07 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

11.08 References. The words "herein," "hereof," "hereunder" and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular article, section or subsection. Any reference herein

to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Agreement unless otherwise stated herein. Any reference herein to an exhibit or schedule shall be deemed to refer to the applicable exhibit or schedule attached hereto unless otherwise stated herein.

11.09 Survival. The obligations of the Company under Sections 5 and 11.03 shall survive the repayment of the Indebtedness, the expiration of the Letters of Credit and the termination of the Commitments.

11.10 Captions. Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

11.11 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE NOTES OR THE OTHER SECURITY INSTRUMENTS MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE COMPANY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE COMPANY HEREBY IRREVOCABLY WAIVES (TO THE EXTENT PERMITTED BY LAW) ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE AND DOES NOT PRECLUDE THE BANK FROM OBTAINING JURISDICTION OVER THE COMPANY IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) The Company hereby irrevocably designates CT Corporation System located at 277 Park Avenue, New York, New York 10017, as the designee, appointee and agent of the Company to receive, for and on behalf of the Company, service of process in such respective jurisdictions in any legal action or proceeding with respect to this Agreement, the Notes or the other Security Instruments. It is understood that a copy of such process served on such agent will be promptly forwarded by overnight courier to the Company at its

address for notices pursuant to Section 11.02 set forth opposite its signature below, but the failure of the Company to receive such copy shall not affect in any way the service of such process. The Company further irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Company at its said address, such service to become effective 30 days after such mailing.

(d) Nothing herein shall affect the right of the Bank or any holder of a Note to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Company in any other jurisdiction.

11.12 Interest. It is the intention of the parties hereto that the Bank shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby would be usurious as to the Bank under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to the Bank notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in the Notes, this Agreement or in any other Security Instrument or agreement entered into in connection with or as security for the Notes, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to the Bank that is contracted for, taken, reserved, charged or received by the Bank under the Notes, this Agreement or under any of the other aforesaid Security Instruments or agreements or otherwise in connection with the Notes shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be cancelled automatically and if theretofore paid shall be credited by the Bank on the principal amount of the Indebtedness (or, to the extent that the principal amount of the Indebtedness shall have been or would thereby be paid in full, refunded by the Bank to the Company); and (ii) in the event that the maturity of the Notes is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to the Bank may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be cancelled automatically by the Bank as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by the Bank on the principal amount of the Indebtedness (or, to the extent that the principal amount of the Indebtedness shall have been or would thereby be paid in full,

refunded by the Bank to the Company). All sums paid or agreed to be paid to the Bank for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to the Bank, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Loans evidenced by the Notes until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to the Bank on any date shall be computed at the Highest Lawful Rate applicable to the Bank pursuant to this Section and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to the Bank would be less than the amount of interest payable to the Bank computed at the Highest Lawful Rate applicable to the Bank, then the amount of interest payable to the Bank in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to the Bank until the total amount of interest payable to the Bank shall equal the total amount of interest which would have been payable to the Bank if the total amount of interest had been computed without giving effect to this Section.


Without limiting the intent of the parties expressed under Sections 11.11 and 11.12, to the extent, if any, that Article 5069-1.04 of the Texas Revised Civil Statutes is relevant to the Bank for the purpose of determining the Highest Lawful Rate, the Bank hereby elects to determine the applicable rate ceiling under such Article by the indicated (weekly) rate ceiling from time to time in effect and, in no event, shall Tex. Rev. Civ. Stat. Ann. Art. 5069, ch. 15 (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to this Agreement or the Notes.

11.13 Senior Debt. The Indebtedness incurred and to be incurred hereunder is and shall be Senior Debt, as defined in the Subordinated Debt and is and shall be entitled to all of the rights and benefits afforded to such Senior Debt.

11.14 Effectiveness. This Agreement shall not be effective until the date that it is delivered to the Bank in the State of New York, accepted by the Bank in such State, and executed by the Bank in such State.

The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

LANDMARK PETROLEUM INC.

By: 
H. R. Bowers
President

Address for Notices and Chief
Executive Office:

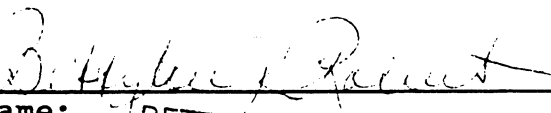
50 West 990 South
Brigham City, Utah 84302

Telecopier No.: (801) 734-6400
Telephone No.: (801) 734-6556
Attention: Robert W. Anderson

Address for principal place of
business:

1193 Highway 6 & 50
Fruita, Colorado 81521

THE CHASE MANHATTAN BANK, N.A.

By: 
Name: BETTYLOU J. ROBERT
Title: VICE PRESIDENT

Address for Notices:

The Chase Manhattan Bank, N.A.
1 Chase Manhattan Plaza
New York, New York 10005

Telecopier No.: (212) 552-1687
Telephone No.: (212) 552-6362
Attention: Vito Cipriano

with a copy to:

Chase National Corporate Services, Inc.
1100 Milam, Suite 2345
Houston, Texas 77002

Telecopier No.: (713) 751-9122
Telephone No.: (713) 751-5661
Attention: Peter Licalzi

c:\wp50\lpi\arca-5.lpi
0732:4024 June 23, 1992

EXHIBIT A

[Form of Term Note]

\$ _____ New York, New York _____, 1992

FOR VALUE RECEIVED, LANDMARK PETROLEUM INC., a Delaware corporation (the "Company"), hereby promises to pay to the order of THE CHASE MANHATTAN BANK, N.A. (the "Bank"), at the Principal Office of the Bank located at 1 Chase Manhattan Plaza, New York, New York 10005, the principal sum of _____ Dollars (\$ _____), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement referred to below with respect to the Term Loan, and to pay, to the extent permitted by law, interest on the unpaid principal amount of, and any overdue interest on, the Term Loan, at such office, in like money and funds, for the period commencing on the date of the Term Loan until the Term Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement (together with all amendments or supplements thereto, the "Credit Agreement") dated as of _____, 1992, between the Company and the Bank, and evidences the Term Loan made by the Bank thereunder. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments upon the terms and conditions specified therein.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

LANDMARK PETROLEUM INC.

By: _____
Name:
Title:

EXHIBIT B-1

[Form of Revolving Credit Note]

\$ _____ New York, New York _____, 1992

FOR VALUE RECEIVED, LANDMARK PETROLEUM INC., a Delaware corporation (the "Company"), hereby promises to pay to the order of THE CHASE MANHATTAN BANK, N.A. (the "Bank"), at the Principal Office of the Bank located at 1 Chase Manhattan Plaza, New York, New York 10005, the principal sum of _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Revolving Credit Loans made by the Bank to the Company under the Credit Agreement referred to below), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement referred to below with respect to Revolving Credit Loans, and to pay, to the extent permitted by law, interest on the unpaid principal amount of, and, any overdue interest on, each such Revolving Credit Loan, at such office, in like money and funds, for the period commencing on the date of such Revolving Credit Loan until such Revolving Credit Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date and amount of each Revolving Credit Loan made by the Bank to the Company, and each payment made on account of the principal thereof, shall be recorded by the Bank on its books and, prior to any transfer of this Note, endorsed by the Bank on the schedule attached hereto or any continuation thereof.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement (together with all amendments or supplements thereto, the "Credit Agreement") dated as of _____, 1992, between the Company and the Bank, and evidences Revolving Credit Loans made by the Bank thereunder. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Revolving Credit Loans upon the terms and conditions specified therein.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN
ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

LANDMARK PETROLEUM INC.

By: _____
Name:
Title:

LOANS

<u>Date of Loan</u>	<u>Principal Amount of Loan</u>	<u>Amount Paid or Prepaid</u>	<u>Amount of Interest Paid</u>	<u>Unpaid Principal Amount</u>	<u>Notation Made By</u>
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EXHIBIT B-2

[Form of Special Purpose Credit Note]

\$_____ New York, New York _____, 1992

FOR VALUE RECEIVED, **LANDMARK PETROLEUM INC.**, a Delaware corporation (the "Company"), hereby promises to pay to the order of **THE CHASE MANHATTAN BANK, N.A.** (the "Bank"), at the Principal Office of the Bank located at 1 Chase Manhattan Plaza, New York, New York 10005, the principal sum of _____ Dollars (\$_____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Special Purpose Credit Loans made by the Bank to the Company under the Credit Agreement referred to below), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement referred to below with respect to Special Purpose Credit Loans, and to pay, to the extent permitted by law, interest on the unpaid principal amount of, and any overdue interest on, each such Special Purpose Credit Loan, at such office, in like money and funds, for the period commencing on the date of such Special Purpose Credit Loan until such Special Purpose Credit Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date and amount of each Special Purpose Credit Loan made by the Bank to the Company, and each payment made on account of the principal thereof, shall be recorded by the Bank on its books and, prior to any transfer of this Note, endorsed by the Bank on the schedule attached hereto or any continuation thereof.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement (together with all amendments or supplements thereto, the "Credit Agreement") dated as of _____, 1992, between the Company and the Bank, and evidences Special Purpose Credit Loans made by the Bank thereunder. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Special Purpose Credit Loans upon the terms and conditions specified therein.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN
ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

LANDMARK PETROLEUM INC.

By: _____
Name:
Title:

LOANS

Date of <u>Loan</u>	Principal Amount <u>of Loan</u>	Amount Paid or <u>Prepaid</u>	Amount of Interest <u>Paid</u>	Unpaid Principal <u>Amount</u>	Notation <u>Made By</u>
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EXHIBIT C

FORM OF
COMPLIANCE CERTIFICATE

The undersigned hereby certifies that he is the _____ of Landmark Petroleum Inc., a Delaware corporation (the "Company"), and that as such he is authorized to execute this certificate on behalf of the Company. With reference to the Amended and Restated Credit Agreement dated as of _____, 1992 (together with all amendments or supplements thereto being the "Agreement") between the Company and The Chase Manhattan Bank, N.A., the undersigned further certifies, represents and warrants as follows (each capitalized term used herein having the same meaning given to it in the Agreement unless otherwise specified):

(a) The representations and warranties of the Company contained in Section 7 of the Agreement and otherwise made in writing by or on behalf of the Company pursuant to the Agreement were true and correct in all material respects when made, and are repeated at and as of the time of delivery hereof and are true and correct in all material respects at and as of the time of delivery hereof.

(b) The Company has performed and complied with all conditions contained in the Agreement required to be performed or complied with by it prior to or at the time of delivery hereof.

(c) Since the date of the Financial Statements, no change has occurred and is continuing in the condition, financial or otherwise, of the Company or any Subsidiary which would have a Material Adverse Effect.

(d) There exists, and, after giving effect to the Loans or Letters of Credit with respect to which this certificate is being delivered, will exist, no Default under the Agreement.

EXECUTED AND DELIVERED this ____ day of _____,
199_.

LANDMARK PETROLEUM INC.

By: _____
Title: _____

EXHIBIT D

FORM OF

ENVIRONMENTAL COMPLIANCE CERTIFICATE

The undersigned hereby certifies that he is the _____ of Landmark Petroleum Inc., a Delaware corporation (the "Company"), and that as such he is authorized to execute this certificate on behalf of the Company. With reference to the Amended and Restated Credit Agreement dated as of _____, 1992 (together with all amendments or supplements thereto being the "Agreement") between the Company and The Chase Manhattan Bank, N.A., the undersigned further certifies, represents and warrants, as follows (each capitalized term used herein having the same meaning given to it in the Agreement unless otherwise specified):

Except as specified on Schedule 7.16 attached to the Agreement and Schedule D-1 attached hereto, the Company and all Subsidiaries are in full compliance with the requirements of Section 9.13 of the Agreement.

With respect to those matters disclosed on Schedule 7.16 to the Agreement and Schedule D-1 attached hereto, the Company and its Subsidiaries are taking the actions described on Schedule D-1 in order to establish and maintain compliance with the requirements of Section 9.13 of the Agreement.

EXECUTED AND DELIVERED this ____ day of _____,
19__.

LANDMARK PETROLEUM INC.

By: _____
Title: _____

EXHIBIT E

[FORM OF OPINION OF COMPANY'S COUNSEL]

[Date of loan closing]

The Chase Manhattan Bank, N.A.
1 Chase Manhattan Plaza
New York, New York 10005

Gentlemen:

We have acted as counsel for Landmark Petroleum Inc., a Delaware corporation (the "Company"), and Landmark Carbon Inc., a Delaware corporation ("Carbon"), in connection with the Amended and Restated Credit Agreement dated as of June 24, 1992 (the "Credit Agreement"), between the Company and The Chase Manhattan Bank, N.A. (the "Bank"). This opinion is delivered to you pursuant to Section 6.01 of the Credit Agreement. Capitalized terms not otherwise defined herein are defined as set forth in the Credit Agreement.

In connection with the opinions hereinafter expressed, we have (i) investigated such questions of law, (ii) examined such corporate documents and records of the Company and Carbon and certificates of public officials, and (iii) received such information and certificates from officers and representatives of the Company and Carbon, as we have deemed necessary or appropriate for the purposes of this opinion. We have examined the following documents (those identified in items (a) through (i) below being referred to collectively as the "Identified Documents"):

- (a) A copy of the Credit Agreement executed by the Company;
- (b) The executed Notes;
- (c) A copy of the Second Amendment and Supplement to Deed of Trust and Security Agreement of even date with the Credit Agreement executed by the Company;
- (d) A copy of the Second Amendment and Supplement to Security Agreement (Equipment and Other Property) of even date with the Credit Agreement executed by the Company;

- (e) A copy of the Second Amendment and Supplement to Security Agreement (Accounts, Inventory and Other Property) of even date with the Credit Agreement executed by the Company;
- (f) A copy of the Second Amendment and Supplement to Security Agreement (Stock, Bonds and Other Securities) of even date with the Credit Agreement executed by the Company;
- (g) A copy of the Third Amendment and Supplement to Security Agreement (Accounts and Other Property) of even date with the Credit Agreement executed by Carbon;
- (h) A copy of the Consultation and Service Agreement dated as of June 19, 1992, executed by the Company; and
- (i) A copy of the Option Agreement (CPI) of even date with the Credit Agreement executed by the Company (the "Option Agreement (CPI)").

We have assumed the following: the genuineness of all signatures on all documents and instruments (other than the signatures of the officers of the Company and Carbon); the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the correctness and accuracy of all facts set forth in all certificates referred to in this opinion; each instrument and agreement reviewed by us is a legal, valid and binding obligation of and is enforceable in accordance with its terms against the parties thereto (other than the Company and Carbon); each individual executing or otherwise taking any action with respect to any of the Identified Documents or any related document or other certificate, instrument or agreement (other than officers of the Company or Carbon to the extent representing or acting on behalf of the Company or Carbon) has the legal capacity to effect such execution or action.

On the basis of, and in reliance upon, all of the foregoing and subject to the qualifications set forth herein, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite corporate power and authority to own, operate and lease its Properties and to carry on in all material respects its business as is now being conducted and as currently proposed to be conducted. Carbon is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite corporate power

and authority to own, operate and lease its Properties and to carry on in all material respects its business as is now being conducted and as currently proposed to be conducted.

2. The Company is duly qualified or licensed as a foreign corporation authorized to do business in the States of Colorado and Texas. Carbon is duly qualified or licensed as a foreign corporation authorized to do business in the State of Colorado.

3. The Company has the requisite corporate power and authority to execute, deliver and perform the Identified Documents to which it is a party and to consummate the transactions contemplated thereby. The execution delivery and performance by the Company of the Identified Documents to which it is a party and the consummation of the transactions contemplated thereby by the Company have been duly authorized by all necessary corporate action on the part of the Company. The Identified Documents to which the Company is shown as a party have been duly and validly executed and delivered by the Company.

4. Carbon has the requisite corporate power and authority to execute, deliver and perform the Identified Documents to which it is a party and to consummate the transactions contemplated thereby to be consummated by it. The execution, delivery and performance by Carbon of the Identified Documents to which it is a party and the consummation of the transactions contemplated thereby by Carbon have been duly authorized by all necessary corporate action on the part of Carbon. The Identified Document to which Carbon is shown as a party has been duly and validly executed and delivered by Carbon.

5. At the date of the Credit Agreement, except for the litigation described on-Schedule 7.03 to the Credit Agreement, no litigation, investigation, legal or administrative proceeding or arbitration known to us after due inquiry, of or before any court, arbitrator or governmental authority is pending or threatened against the Company or Carbon which could reasonably be expected to result in a judgment or liability not fully covered by insurance and which would have a Material Adverse Effect.

6. The execution and delivery of the Identified Documents by the Company and Carbon and the performance by the Company and Carbon of their respective obligations thereunder do not violate, conflict with or result in a default under any provision of (i) any existing law, rule or regulation applicable to the Company or Carbon, or

(ii) to the best of our knowledge after due inquiry, any order, injunction or decree of any court or governmental agency having jurisdiction over the Company or Carbon.

7. The Option Agreement (CPI) constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

8. In connection with the choice of law provisions of the Identified Documents, we bring to your attention the recent Supreme Court of Texas case styled *Edward DeSantis, et al. v. Wackenhut Corporation*, 793 S.W. 2d 670 (Tex. 1990) which generally provides that contractual choice of law provisions may not be valid if application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue. However, based on the factual assumptions set forth below, if the issue is properly presented to a court of competent jurisdiction, the choice of New York law to govern the Credit Agreement and the Notes, and the choice of Colorado law to govern the other Identified Documents, should be found by a court sitting in the State of Texas to be a valid choice of law under the laws of the State of Texas.

The opinions above are subject in all respects to the following:

1. We are licensed to practice law in the State of Texas and do not purport to be experts on, generally familiar with, or expressing legal conclusions based on, laws other than the law of the State of Texas, the federal laws of the United States of America and the General Corporation Law of the State of Delaware.

2. Our opinion is subject to applicable bankruptcy, insolvency, moratorium and other similar laws affecting generally creditors' rights, including without limitation, laws pertaining to fraudulent conveyances and preferences.

3. Whenever our opinion is based on circumstances "known to us after due inquiry" or is stated to be "to the best of our knowledge after due inquiry," we have relied exclusively on certificates of officers (after the discussion of the contents thereof with such officers) of the Company and Carbon or certificates of others as to the existence or nonexistence of the circumstances upon which such opinion is predicated. We have no reason to believe, however, that any such certificate is untrue or incorrect in any material respect.

4. In rendering the opinions herein relating to the absences of any litigation, investigation, proceeding or arbitration, we express no opinion with respect to the possible effect of litigation, arbitration, proceedings and investigations as to which the Company or Carbon is not a named party.

5. With respect to the choice of law provisions in the Option Agreement (CPI), we assume the enforceability of such provision but express no opinion with respect thereto.

6. With respect to the enforceability of the Option Agreement (CPI), we express no opinion as to the availability of specific performance or any other equitable remedy (regardless of whether such question is considered in a proceeding in equity or at law).

7. With respect to the enforceability of the option granted in the Option Agreement (CPI), we have assumed that all documents necessary to exercise the option will be properly authorized, executed and delivered and that all consents needed from third parties (other than the directors and stockholders of the Company) in connection with the exercise of the option and the transfer of assets pursuant thereto will be obtained.

8. We have assumed that (i) the Bank is a national banking association domiciled in New York and is the only lender party to the Credit Agreement, (ii) the Credit Agreement was executed by the Bank in New York, (iii) advances and payments under the Credit Agreement and the Notes will be made in New York, and (iv) substantially all the property covered by the Identified Documents is located in Colorado.

9. We express no opinion as to the creation, existence, perfection or priority of any Lien.

This opinion is to be delivered only to the Bank and its counsel and only in connection with the transactions contemplated by the Identified Documents and may not be quoted, circulated or published in whole or in part or furnished to any other Person without our prior written consent.

Very truly yours,

Bracewell & Patterson

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EXHIBIT F

Security Instruments

1. Amended and Restated Credit Agreement
2. Deed of Trust and Security Agreement by the Company, dated as of November 5, 1990, as amended by First Amendment and Supplement to Deed of Trust and Security Agreement dated as of June 3, 1992 and Second Amendment and Supplement to Deed of Trust and Security Agreement
3. Security Agreement (Equipment and Other Property) by the Company, dated as of November 5, 1990, as amended by First Amendment and Supplement to Security Agreement (Equipment and Other Property) dated as of June 3, 1992 and Second Amendment and Supplement to Security Agreement (Equipment and Other Property)
4. Security Agreement (Accounts, Inventory and Other Property), by the Company, dated as of November 5, 1990, as amended by First Amendment and Supplement to Security Agreement (Accounts, Inventory and Other Property) dated as of June 3, 1992 and Second Amendment and Supplement to Security Agreement (Accounts, Inventory and Other Property)
5. Security Agreement (Accounts and Other Property) by the Calciner Operating Subsidiary, dated as of November 5, 1990, as amended by First Amendment and Supplement to Security Agreement (Accounts and Other Property) dated as of June 14, 1991, Second Amendment and Supplement to Security Agreement (Accounts and Other Property) dated as of June 3, 1992, and Third Amendment and Supplement to Security Agreement (Accounts and Other Property)
6. Security Agreement (Stock, Bonds and Other Securities) by the Company dated as of November 5, 1990, as amended by First Amendment and Supplement to Security Agreement (Stock, Bonds and Other Securities) dated as of June 3, 1992 and Second Amendment and Supplement to Security Agreement (Stock, Bonds and Other Securities)
 - a. Certificate(s) representing 100% of the issued and outstanding shares of Calciner Operating Subsidiary stock
 - b. Certificate(s) representing 100% of the issued and outstanding shares of Landmark Resources Inc. stock
 - c. Stock Powers related to 6a and 6b

EXHIBIT G

FORM OF
BORROWING REQUEST

_____, 199_

LANDMARK PETROLEUM INC., a Delaware corporation (the "Company"), pursuant to the Amended and Restated Credit Agreement dated as of _____, 1992, between the Company and THE CHASE MANHATTAN BANK, N.A. (together with all amendments or supplements thereto, the "Credit Agreement") hereby makes the requests indicated below (unless otherwise defined herein capitalized terms are defined in the Credit Agreement):

☐

1. Revolving Credit Loans:

- (a) Aggregate amount of new Revolving Credit Loans to be made is \$ _____;
- (b) Requested funding date is _____, 199__.

☐

2. Letter(s) of Credit:

- (a) Amount of Letter of Credit to be issued, reissued, renewed or extended is \$ _____;
- (b) Requested date of issuance is _____, 199__;
- (c) Beneficiary: _____;
and
- (d) Terms of Letter of Credit: _____.

☐

3. Term Loan:

Requested funding date is _____.

☐

4. Special Purpose Credit Loans:

- (a) Aggregate amount of new Special Purpose Credit Loans to be made is \$ _____;
- (b) Requested funding date is _____.

The undersigned certifies that he is the _____ of the Company, and that as such he is authorized to execute this certificate on behalf of the Company. The undersigned further certifies, represents and warrants on behalf of the Company that

the Company is entitled to receive the requested Loan or Letter of Credit under the terms and conditions of the Credit Agreement (including, but not limited to, the conditions set forth in Sections 2.02, 6.02 and 6.03 of the Credit Agreement).

If delivered as a request for Revolving Credit Loans or Letter(s) of Credit, Schedule G-1 is attached to this Borrowing Request for the purpose of showing the availability of credit under the Credit Agreement. Each amount thereon is correctly stated.

If delivered as a request for Special Purpose Credit Loans, Schedule G-2 is attached to this Borrowing Request for the purpose of showing the availability of credit under the Credit Agreement. Each amount thereon is correctly stated.

LANDMARK PETROLEUM INC.

By: _____
Name:
Title:

SCHEDULE G-1
to
Borrowing Request

Date _____, 199__

- | | | |
|----|---|----------|
| 1. | Revolving Credit/Letter of Credit Commitment | \$ _____ |
| 2. | Less outstanding Revolving Credit Loans | \$ _____ |
| 3. | Less outstanding Letters of Credit issued under the Revolving Credit/Letter of Credit Commitment | \$ _____ |
| 4. | Less all amounts drawn on Letters of Credit, but not yet reimbursed | \$ _____ |
| 5. | Excess (deficit) of remaining Revolving Credit/Letter of Credit Commitment over amounts outstanding (#1 - #2 - #3 - #4 above) | \$ _____ |
| 6. | Request for new Revolving Credit Loan(s) | \$ _____ |
| 7. | Request for new Letter(s) of Credit under Revolving Credit/Letter of Credit Commitment | \$ _____ |
| 8. | Remaining excess (deficit) of Revolving Credit/Letter of Credit Commitment over amounts outstanding (#5 - #6 - #7 above) | \$ _____ |

SCHEDULE G-2
to
Borrowing Request

Date _____, 199__

- | | | |
|----|--|----------|
| 1. | Special Purpose Credit Maximum
Availability | \$ _____ |
| 2. | Less aggregate amount of all outstanding
Special Purpose Credit Loans | \$ _____ |
| 3. | Excess (deficit) of remaining Special
Purpose Credit Maximum Availability over
all outstanding Special Purpose Credit
Loans (#1 - #2) | \$ _____ |
| 4. | Request for new Special Purpose Credit
Loans | \$ _____ |

SCHEDULE 7.02(b)

Under a Feedstock Agreement with Petrosource, Petrosource has possession of \$300,000 delivered to it by the Company. The Company has been advised from time to time that Petrosource believes that additional sums are owed to it by the Company. The parties are no longer operating under the Feedstock Agreement. Petrosource has not made any claim as to any specific amount alleged to be owed it by the Company.

The Company has a contract with the United States government for the sale of jet fuel. The contract requires a price adjustment based on factors set forth therein. This price adjustment process may result in a refund owing to the United States government.

The Company is in default under all of its equipment leases.

SCHEDULE 7.03

(LITIGATION AND LIABILITIES)

VENDOR	LIEN	SUIT	AMOUNT		RESPONSE TO SETTLEMENT LETTER		
					YES	NO	NO REPLY
A & B Asbestos	x		61,741.27		x		
All Waste (Western Ind. Cleaning Service Inc. and Vac-N-Jet Environmental)		x	40,134.25	Plus attorney's fees, court costs and interest not less than \$10,000.00			x
Basic Industries	x		156,686.49	Plus interest, attorney's fees and other costs.		x	
Falcon Pump & Supply Co. ¹		x	20,098.55		x		
J. & J. Protective Coating ²	x	x	18,000.00	Plus court costs. Offered to settle for \$15,000.00			x
Roe Fire & Safety		x	2,637.42	Plus 8% interest/yr. plus court costs.			x
Webb Crane			30,427.44	Rec'd intent to file lien.			

¹ Plaintiff agreed to terms of settlement and has filed Motion to Set Aside Judgment and Dismiss with Prejudice. Presently awaiting court order.

² (a) Action No. 1: Satisfaction of judgment filed with the court. Filed for certificate of satisfaction necessary to release judgment lien.

(b) Action No. 2: Filed Stipulation for Dismissal. Presently awaiting court order. Possess a signed release of mechanics lien to be filed.

**Schedule of Leases Due
Annualized Totals**

<u>Lessor</u>	<u>Description</u>	<u>Due 1992</u>	<u>Due 1992</u>	<u>Due 1994</u>	<u>Due 1995</u>	<u>Due 1996</u>	<u>Total Balance</u>
Bank One	Diesel Tank Lease REF #19	\$120,000.00	\$120,000.00	\$120,000.00	\$120,000.00	\$60,000.00	\$540,000.00
BFI	Cleaning Equipment REF #8	8,168.79					8,168.79
BFI	Cleaning Equipment REF #9	1,893.35					1,893.35
First Interstate Leasing	REF #13 (no equipment schedule)	21,330.00	21,330.00	21,330.00	5,332.50		69,322.50
GATX	Railcar Lease REF #16, 17	52,500.00	52,500.00	52,500.00	52,500.00	39,375.00	249,375.00
Pitney Bowes	Office Equipment REF #10	1,870.99	2,494.66	623.67			4,989.32
Pullman Leasing	Railcar Lease REF #20	79,200.00					79,200.00
Total Annualized Expense		\$284,963.13	\$196,324.66	\$194,453.67	\$177,832.50	\$99,375.00	\$952,948.95

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SHCEDULE 7.10

(Disclosure of Liens other than Excepted Liens)

1. See Schedule 7.03.

Schedule 7.16
Disclosures as to Section 7.16

Environmental matters disclosed to the Bank, including:

1. The matters described in the report entitled "Western Slope Refining Company: Confidential Memorandum," prepared by Turner, Mason & Company, dated January 1990.
2. CDH Notice of Violation issued January 30, 1990 for failure to have continuous emission monitoring for SO₂ and H₂S. See item 3 below.
3. CDH Compliance Order issued April 5, 1990 requiring implementation of a continuous emission monitoring program for H₂S. In addition, the U.S. Environmental Protection Agency Notice of Violation issued April 18, 1990 for failure to continuously monitor H₂S and SO₂ emissions under the PSD permit. H₂S and SO₂ monitors have been installed but are undergoing certification testing.
4. CDH Final Order for Compliance issued July 27, 1990 concerning exceedance of SO₂ per bbl. oil processed emission standard for SO₂ sources. The Company is now operating in compliance with the Order.
5. CDH Compliance Order on Consent No. 88-09-29-01 dated September 29, 1988 and closure plans submitted and approved pursuant to that Order. The Company understands that Gary-William has received an approved closure plan and is implementing such plan.
6. The matters described in the letter pursuant to Section 6.01(o) of the Original Credit Agreement or in the letter from Purvin & Gertz, Inc. to the Bank dated August 21, 1990.
7. In addition as to Section 7.16(e) of the Original Credit Agreement, Pilko & Associates, Inc. conducted a limited environmental assessment of the Mortgaged Property on behalf of the Company. Pilko's assessment process included a visit to and review of the Mortgaged Property and the operations therein, discussions with environmental staff, and review of a variety of environmental information sources such as facility records, reports, regulations and industry standards. See also the letters referenced above.

8. The NPDES permit has expired, and the Company is now operating on an interim basis as instructed by the appropriate regulatory agency and is negotiating a new permit.
9. The Company is currently operating under a Colorado Department of Health compliance order dated December 3, 1991 dealing with visible emissions (fugitive dust) emanating from calcined coke handling facilities.
10. Completion of the enclosure of the Refinery's process sewer system and subsequent closure of the present open hydrocracker ditch may be necessary upon restarting facility operations. While the Refinery is not operating and is not in closure, these do not constitute violations. Should the Refinery be returned to operation as a fuel products refinery, these closures would have to be completed.
11. The lab underground storage tank closure must be completed. This could result in the discovery of, and remediation and clean-up of, contamination.

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Schedule 9.01
(Debt not reflected in Financial Statements)

[None]

Schedule 9.03
(Investments, loans or advances
not reflected in Financial Statements)

[None]

Schedule 9.10
(Accumulated Funding Deficiencies)

[None]

Tab B

Exhibit A
to Purchase Agreement

MARKETING AGREEMENT

THIS MARKETING AGREEMENT ("Agreement") is entered into as of February 28, 1994, between FRUITA MARKETING & MANAGEMENT, INC., a Delaware corporation ("Wescourt") LANDMARK PETROLEUM, INC., a Delaware corporation ("Landmark") with the consent of THE CHASE MANHATTAN BANK, N.A. ("Chase") as set forth on the signature page hereof.

RECITALS

A. Landmark owns an oil refinery located at 1493 Highway 6 & 50, Fruita, Colorado, and comprised of certain real property, fixtures, personal property and other assets (all as more fully described in the Purchase Agreement, the "Refinery Assets").

B. Simultaneously herewith, Landmark and Wescourt Group, Inc., an affiliate of Wescourt ("Purchaser"), are entering into an Asset Purchase Agreement (the "Purchase Agreement") pursuant to which Purchaser is acquiring from Landmark the portion of the Refinery Assets constituting the refinery's offices, laboratories, maintenance building, parking facilities, rail sidings, loading/unloading docks, storage tanks and truck and loading racks, all as more fully described in the Purchase Agreement (the "Transferred Assets").

C. Landmark wishes to appoint Wescourt, and Wescourt wishes to accept Landmark's appointment, as Landmark's exclusive representative for the marketing and sale to third parties of all Refinery Assets other than the Transferred Assets (such other Refinery Assets, the "Assets") on the terms and conditions set forth in this Agreement.

D. The Assets are subject to certain liens and security interests in favor of Chase (the "Chase Liens") securing the obligations of Landmark under the Amended and Restated Credit Agreement dated as of June 24, 1992, as amended from time to time prior to the date hereof, between Landmark and Chase (the "Loan Agreement").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, Wescourt and Landmark hereby agree as follows:

ARTICLE 1.

APPOINTMENT

1.1 Appointment. On the terms and conditions set forth in this Agreement, Landmark hereby appoints Wescourt, and Wescourt hereby accepts appointment, as Landmark's exclusive representative for the marketing and sale of the Assets to third parties.

ARTICLE 2.

ASSET SALES

2.1 Basic Duties of the Wescourt. During the term of this Agreement, Wescourt shall, at its sole cost and expense (subject to reimbursement from sale proceeds as provided in Section 2.4) (a) use its reasonable commercial efforts to identify, solicit and pursue opportunities for the sale of Assets and (b) endeavor in good faith to negotiate and consummate sales of Assets ("Sales") on the terms and conditions set forth herein.

2.2 Terms of Sale. The parties agree that, in carrying out its obligations hereunder, Wescourt shall have complete authority over, and discretion in the management of, the disposition of the Assets by Landmark, including, without limitation, selecting the Assets to be offered for sale, determining the order and timing of sales, identifying sales leads, pursuing sales leads, negotiating sales terms, consummating sales, and preparing Assets for sale and subsequent delivery, subject only to the following limitations:

(a) Maximizing Sales Proceeds. Wescourt shall conduct Sales on an arms-length basis with the goal of maximizing the aggregate proceeds to Landmark of the Sales;

(b) Minimizing Retained Liabilities. Unless Landmark expressly agrees in writing, Landmark shall not be responsible for any post-Sale liabilities with respect to Assets;

(c) Tax Lien. Wescourt shall make all Sales free and clear of, and without any reduction in the sales price for, the Tax Lien (as defined in Section 7.2) except such reduction as is applicable solely to the amount, if any, that would otherwise be payable to Wescourt as Commission on such Sale under Article 3;

(d) "As-Is" Sales. Wescourt shall arrange all Sales on an "as-is, where-is" basis. Wescourt shall not make any representation or warranty on Landmark's behalf with respect to the Assets (other than as to Landmark's title thereto) without the prior written consent of Landmark. Wescourt shall not be under any obligation to make any representation or warranty on its own behalf with respect to the Assets;

(e) Major Sales. Wescourt shall provide Landmark and Chase with written notice of, and an opportunity to object to, any "Major Sale" as provided for (and defined in) Section 2.3; and

(f) Payment of Purchase Price. Wescourt shall require all purchasers of Assets to pay the purchase price therefor directly into the "Deposit Account" as provided for (and defined in) Section 2.4.

2.3 Major Sales.

(a) Definition. As used herein, the term "Major Sale" means any Sale involving (i) individually or in the aggregate together with other related Sales, a total purchase price in excess of Two Hundred Fifty Thousand Dollars (\$250,000) or (ii) the transfer of title to any of the Assets listed in attached Schedule 1;

(b) Notice. Prior to consummating any Major Sale, Wescourt shall provide Landmark and Chase with a written notice ("Sales Notice") of the proposed Sale describing the Assets subject to the proposed Sale, the proposed purchaser, the proposed purchase price, and any other material terms and conditions of the proposed Sale;

(c) Right to Object. Either Landmark or Chase shall have the right to object, for any reason, to any Major Sale within 10 days after receiving the applicable Sales Notice (the "Objection Period"). Any such objection ("Objection") shall be in writing, shall be delivered to Wescourt within the Objection Period, and shall identify the Major Sale to which it relates and the reasons for the Objection. If Wescourt fails to receive an Objection to any Major Sale within the applicable Objection Period, Wescourt shall be free to consummate such Sale (on the terms described in the applicable Sales Notice or on terms more favorable to Landmark). If Wescourt receives an Objection to any Major Sale within the applicable Objection Period and otherwise conforming with the foregoing, Wescourt shall not proceed with such Sale, but such Objection shall not preclude Wescourt from pursuing other Major Sales on

substantially the same terms provided that Landmark and Chase are provided with an additional Sales Notice, and opportunity to object, to any such other Major Sales.

2.4 Payment of Purchase Price; Reimbursement of Sales Expenses.

(a) Establishment of Deposit Account. Prior to the consummation of the first Sale, Wescourt shall establish on behalf of Landmark at Chase a special purpose restricted deposit account in Landmark's name (the "Deposit Account") with respect to which Chase shall have the sole right to make withdrawals as hereafter provided. Landmark hereby grants to Chase a security interest and right of setoff in the Deposit Account to secure the Chase Claim (as defined in Section 5.2). Wescourt shall require all purchasers of Assets to pay the purchase price therefor directly into the Deposit Account.

(b) Wescourt Account; Withdrawals from Deposit Account. Prior to the consummation of the first Sale, Wescourt shall establish at Chase a deposit account in Wescourt's name (the "Wescourt Account"). Upon the request of Wescourt in compliance with the terms hereof, Chase will immediately make transfers from the Deposit Account into the Wescourt Account to pay "Sale Expenses," as follows:

(i) Sale Expenses. As used herein, the term "Sale Expenses" means the following: (A) all reasonable costs and expenses incurred by Wescourt, its affiliates, or any of their respective officers, directors, employees, or agents (each a "Wescourt Person") in the assessment, maintenance, marketing or sale of the Assets, including, without limitation, costs incurred in (1) assessing the initial condition and marketability of the Assets, both before and after the date hereof (including costs incurred by Purchaser under the Purchase Agreement for attorney's fees (after the first \$20,000 thereof), surveying, subdividing, obtaining title insurance with respect to, and assessing the environmental condition of, the Refinery Assets (up to a maximum of \$20,000 for such environmental assessment) provided that the aggregate of all such expenses incurred in respect of transactions contemplated by the Purchase Agreement shall not exceed \$150,000, (2) settling any obligations or liabilities relating to the Assets and arising out of activities of Landmark prior to Closing, including, without limitation, any such obligations or liabilities for taxes (other than the Tax Obligations as defined in Section 7.2), (3) preparing inventories of the Assets and related permits and maintaining the Assets and such permits pending the

completion of the Sales, (4) maintaining and insuring the Assets pending the completion of the Sales, (5) marketing the Assets (including for the reasonable fees of attorneys, appraisers, and brokers), and (6) preparing the Assets for sale (including dividing, partitioning, and packaging the Assets); (B) all taxes (other than the Tax Obligations), levies, fees, and assessments imposed or assessed by any governmental authority on the Assets or any Sale, (C) all reasonable costs and expenses incurred in complying with reporting and access requirements under Article 3, (D) all reasonable costs and expenses incurred by any Wescourt Person under the Management Agreement, (E) any Commission payable to Wescourt pursuant to Section 3.1.

(ii) Sales Expenses - Environmental Matters. Without limiting the foregoing, Sales Expenses shall include an allocable portion of the salary and benefits of any employees of Wescourt Persons performing services relating to the environmental condition of the Assets, including assessments of the environmental condition of the Assets and remediation and compliance activities with respect thereto. In addition, in the event that a release, threatened release, disposal, discharge, spillage, loss, seepage, transport or migration of Hazardous Materials (as defined in the Asset Purchase Agreement) shall occur on the Assets during the term of this Agreement, including any release of asbestos in connection with the partition of Assets or preparation of Assets for Sale, all remediation and compliance costs incurred in connection therewith shall be a Sales Expense provided that the same does not result from the gross negligence or willful misconduct of Wescourt.

(iii) Withdrawals. Wescourt shall make a written request ("Withdrawal Notice") to Chase for transfer from the Deposit Account to pay or to reimburse Sales Expenses, such request to reasonably detail such Sales Expenses. Upon receipt of such written request, Chase shall immediately make the requested transfer into the Wescourt Account (unless the expense described in such request cannot reasonably be deemed a Sales Expense); provided, that, with respect to any individual Sales Expense exceeding Two Thousand Five Hundred Dollars (\$2,500) Chase shall have the right to object if, within 10 days after receiving the applicable Withdrawal Notice, it reasonably deems that the Sales Expense described therein is excessive or not reasonably related to the satisfaction of Wescourt's duties hereunder. Any such objection ("Objection") shall be in writing, shall be made within the such 10 day period, and shall identify the Sales Expense to which it relates and the reasons for the Objection in reasonable detail. Chase shall, within such 10 day period, either make an Objection

as provided herein, or transfer the requested amount from the Deposit Account to the Wescourt Account. Chase shall have no duty or obligation to Landmark with respect to any Withdrawal Notice or its determination of the reasonableness thereof.

(c) Cash Sweep.

(i) Determination of Projected Monthly Expenses. On or promptly after the first business day of in June 1994, and thereafter on or promptly after the first business day of each succeeding February, May, August and November during the term of this Agreement, Wescourt, Landmark and Chase shall meet (in person or by telephone conference) in an effort, based on Sales Expenses incurred during the immediately preceding three calendar months, to agree upon projected monthly Sales Expenses ("Projected Monthly Expenses") for the next succeeding three calendar months (e.g. in the case of the May meeting, Projected Monthly Expenses for the months of June, July and August). Projected Monthly Expenses, as of any date, shall be either (a) as agreed upon by Wescourt, Landmark and Chase at the most recent such meeting or (b) if the parties fail to agree on Projected Monthly Expenses at any such meeting by the 15th day of the month during which such meeting is to take place, the average of the monthly Sales Expenses incurred during the two immediately preceding calendar months (e.g. in the case of the May meeting, average Sales Expenses during the months of March and April).

(ii) Deposit of Projected Monthly Expenses. Commencing on the first business day of June 1994, and continuing thereafter on the first business day of each succeeding calendar month, Chase shall automatically, and without the further request of Wescourt, transfer from the Deposit Account to the Wescourt Account an amount equal to the Projected Monthly Expenses for such calendar month (or such lesser amount as is the total amount then on deposit in the Deposit Account) less the then-current balance in the Wescourt Account. Wescourt shall have the right to use all funds so transferred to the Wescourt Account for payment or reimbursement of Sales Expenses; provided, that, Wescourt shall first provide Chase with a Withdrawal Notice as to any individual Sales Expense exceeding Two Thousand Five Hundred Dollars (\$2,500) and Chase shall have the right to object thereto as provided in Section 2.4 if, within 10 days after receiving such Withdrawal Notice, it reasonably deems that the Sales Expense described therein is excessive or not reasonably related to the satisfaction of Wescourt's duties hereunder.

(iii) Cash Sweep. After making the deposit to the Wescourt Account described in the preceding paragraph (ii), Chase may deduct from the Chase Account all "Excess Proceeds" and apply such amounts to the Chase Claim (as defined in Section 5.2(a)). As used herein, the term "Excess Proceeds" means the excess, if any, by which the amount on deposit in the Deposit Account as of the first day of any calendar month exceeds two times the Projected Monthly Expenses for such calendar month. Until the Chase claim has been paid in full, Landmark hereby irrevocably authorizes Chase to deduct and apply Excess Proceeds to the Chase Claim as provided in the preceding sentence. If Sales Expenses exceed, at any time, the amount on deposit in the Deposit Account, Chase agrees to pay Sales Expenses to Wescourt on demand; provided that in no event shall the total amount of such payments by Chase to Wescourt exceed the total amount of Excess Proceeds previously deducted by Chase from the Deposit Account and further, provided, that, in any such event, the Chase Claim shall be reinstated and revived to the extent of such payment.

2.5 Dispute Resolution. Any dispute concerning any Sales Expense or Withdrawal that cannot be promptly resolved by the parties shall be referred to Coopers & Lybrand for resolution. The determination of such accounting firm shall be made promptly and in writing and shall be final, binding and conclusive as to all items in dispute. If the foregoing accounting firm refuses or is unable to participate in the resolution of any such dispute, then the parties hereto shall, acting in good faith, appoint an alternative national accounting firm acceptable to all parties.

ARTICLE 3.

COMMISSIONS; REPORTING

3.1 Commission. In consideration of Wescourt's services hereunder, after proceeds of "Subject Sales" (as defined below), net of Sales Expenses and taxes (hereinafter called "Net Proceeds") in an aggregate amount of \$5,250,000 have been deposited in the Deposit Account pursuant to Section 2.4 and made available for application to the Chase Claim, Wescourt shall receive a sales commission ("Commission") equal to thirty five percent (35%) of all subsequent Net Proceeds. As used herein, the term "Subject Sales" means any sale or other disposition of Assets consummated (a) during the term of this Agreement, or (b) after the term of this Agreement to a purchaser (or affiliate of a purchaser) identified by Wescourt during the term of this Agreement or notified to Landmark within 10

days after the expiration or earlier termination of this Agreement. Any Commission payable to Wescourt hereunder shall be a "Sales Expense" subject to the applicable terms of Section 2 hereof.

3.2 Reporting.

(a) Expense Reporting. Promptly after the closing under the Purchase Agreement, Wescourt shall forward to Landmark and Chase a statement describing, in reasonable detail on an item by item basis, all Sales Expenses incurred prior to such closing. Promptly after the end of each calender month, Wescourt shall forward to Landmark and Chase a statement describing, in reasonable detail on an item by item basis, all Sales Expenses incurred during such calender month.

(b) Sales Reporting. Promptly after the end of each calender quarter, Wescourt shall forward to Landmark and Chase a statement describing, in reasonable detail, (i) all Sales consummated by Wescourt during such calender quarter and (ii) all Sales projected to be consummated by Wescourt during the next-succeeding six calender months.

3.3 Access. During the term of this Agreement, Wescourt shall afford Landmark, Chase and their respective representatives with such access, upon reasonable notice and during Wescourt's regular business hours, to Wescourt's financial records of its activities hereunder as Landmark or Chase may reasonably request in order to verify the accuracy of the reports provided by Wescourt pursuant to the preceding Section 3.2.

ARTICLE 4.

COVENANTS OF LANDMARK

4.1 Negative Covenants. Landmark hereby covenants and agrees that, until the expiration or earlier termination of this Agreement in accordance with its terms:

(a) No Solicitation. Except as otherwise expressly contemplated by this Agreement, Landmark shall not, and shall not grant to any other person the right to, solicit or pursue opportunities for the sale of Assets;

(b) No Sale. Except as otherwise expressly contemplated by this Agreement, Landmark shall not sell, lease, assign, convey, transfer, or otherwise dispose of any Assets;

(c) No Liens. Except for the Chase Liens and such liens existing on the date of this Agreement, Landmark shall not create, incur, assume or suffer to exist any encumbrance, lien, mortgage, pledge, or other security interest with respect to the Assets; and

(d) No Operation of Refinery. Landmark shall not operate, or permit the operation, of the Assets or any portion thereof.

4.2 Affirmative Covenants. Landmark hereby covenants and agrees that, until the expiration or earlier termination of this Agreement in accordance with its terms:

(a) Employees. Landmark shall make its employees ("Employees") (other than Richard Means to the extent that he is no longer employed at the Refinery), available to Wescourt and its affiliates on a full-time basis to assist in the maintenance and disposition of the Assets pursuant hereto and shall use reasonable commercial efforts to retain the Employees in Landmark's employ; provided, however, that Landmark shall be under no obligation to replace any Employee who elects to quit notwithstanding Landmark's efforts to the contrary hereunder; and provided, further, that Wescourt shall be responsible for the Employees' compensation, subject to reimbursement pursuant to Section 2.4;

(b) Referral of Sales Leads. If notwithstanding Section 4.1(a), Landmark becomes aware of any opportunities for the sale of Assets to third parties, Landmark shall promptly appraise Wescourt of such opportunities and cooperate with Wescourt's pursuit thereof;

(c) Further Assurances. In addition to such acts as are expressly required of Landmark hereunder, Landmark shall promptly upon request by Wescourt take such further acts as Wescourt may reasonably request from time to time in order to effectuate the purposes of this Agreement, including, without limitation, executing and delivering such documents as may be necessary or appropriate, in Wescourt's judgment, to maintain the Assets (including the permits applicable thereto) in their existing condition, and to prepare the Assets for, and consummate, Sales.

ARTICLE 5.

COVENANTS OF CHASE

5.1 Release of Chase Liens. By execution below, Chase hereby agrees that upon the Sale of any Asset in

compliance with the terms of this Agreement, the Chase Liens shall automatically, and without any further action by Chase, be released as to the sold Assets. Chase agrees promptly upon deposit of the Sales proceeds into the Deposit Account, and in any event within 20 days thereafter, to execute and deliver to Westcourt such documents as Westcourt may reasonably request and Chase may reasonably approve in order to evidence any such release provided that Westcourt (a) makes such request in writing (identifying with reasonable specificity the Assets subject to Sale), (b) certifies that the Sale complies in all material respects with the provisions hereof and (c) agrees to deliver such documents (and to file such documents in appropriate jurisdictions) only on or after the consummation of the applicable Sale.

5.2 Enforcement.

(a) Definitions. As used herein, (i) the term "Enforcement" means, collectively or individually, for Chase to exercise any right or remedy under the Chase Liens, including, without limitation, to repossess any Refinery Assets, or to commence a judicial or non-judicial enforcement of any of the rights and remedies relating thereto; (ii) the term "Insolvency Proceeding" means, collectively or individually, any case, action or proceeding before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, and (iii) the term "Chase Claim" means all present and future obligations of Landmark to Chase in connection with or in any way related to the Loan Agreement, any Security Instrument (as such term is defined therein), or any other documents related thereto or executed in connection therewith (and any modifications, amendments, supplements, restatements, renewals, and extensions thereof).

(b) Enforcement. For so long as (i) this Agreement remains in force and effect in accordance with its terms and (ii) Westcourt remains in material compliance with the terms hereof, Chase agrees that it shall not commence or maintain any Enforcement, including, without limitation, any attachment, levy, distraint, or foreclosure upon or against any of the Refinery Assets; provided, however, that Chase shall have the right to (A) seek relief from the automatic stay imposed in any Insolvency Proceeding with respect to Landmark, and upon obtaining such relief to commence and maintain a foreclosure proceeding with respect to the Assets, and (B) commence and maintain such other Enforcement as may be required to protect the priority or perfection of

the Chase Liens from the claims of third parties (other than Landmark); provided, further, that any amounts realized by Chase in such foreclosure proceeding or other Enforcement (or any subsequent sale of the Assets or any portion thereof) shall constitute Sale proceeds subject to the terms hereof, including, without limitation, Wescourt's commission rights under Section 3.1;

(c) Insolvency Proceeding. For so long as (i) this Agreement remains in force and effect in accordance with its terms and (ii) Wescourt remains in material compliance with the terms hereof, Chase agrees that it shall not commence or maintain any Insolvency Proceeding with respect to Landmark; provided, however, that Chase shall have the right to commence and maintain an Insolvency Proceeding to the extent that such proceeding would serve to void or stay a wrongful or fraudulent conveyance of assets by Landmark that Chase otherwise is unable to prevent or enjoin.

5.3 Affirmative Covenants. Chase hereby agrees that, until the expiration or earlier termination of this Agreement in accordance with its terms, if Chase becomes aware of any opportunities for the sale of Assets to third parties, Chase shall promptly appraise Wescourt of such opportunities and cooperate with Wescourt's pursuit thereof.

5.4 No Other Obligations. Wescourt acknowledges that Chase's relationship with Landmark is solely that of secured lender/borrower and agrees that Chase shall have no obligations to Wescourt other than those expressly set forth herein and in the Chase Consent (as defined in the Asset Purchase Agreement) to be executed simultaneously herewith.

ARTICLE 6.

TERM AND TERMINATION

6.1 Term. This Agreement shall commence on the date hereof and, unless earlier terminated in accordance with the terms hereof, shall remain in effect until the second (2nd) anniversary of the date hereof. The term of this Agreement shall not be extended without the prior written consent of Wescourt, Landmark and Chase.

6.2 Termination. If Wescourt defaults in the performance of any of its material obligations hereunder or under the Management Agreement dated as of the date hereof between Wescourt and Landmark (the "Management Agreement"), Landmark or Chase may give written notice to Wescourt

thereof. If such default is not corrected or otherwise addressed by Wescourt to the reasonable satisfaction of the party giving such notice within sixty (60) days after Wescourt's receipt of such notice, then the party giving such notice may terminate this Agreement upon thirty (30) days prior written notice to Wescourt. If Wescourt elects to terminate the Management Agreement, Landmark or Chase may terminate this Agreement, upon written notice to Wescourt, within 30 days after the effectiveness of the termination of the Management Agreement. The fact that Wescourt has not consummated Sales, or has consummated a limited number of Sales, during any period will not itself constitute a default hereunder provided that Wescourt is using reasonable commercial efforts to identify, solicit and pursue opportunities for Sales on the terms and conditions set forth herein.

6.3 Rights upon Termination. Upon the expiration or earlier termination of this Agreement, Wescourt's status as Landmark's representative hereunder shall terminate and Wescourt shall immediately cease to represent that it is Landmark's representative and to solicit and pursue prospective Sales. No such expiration or termination of this Agreement shall limit Wescourt's right to reimbursement of Sales Expenses incurred prior to the effective date thereof or affect the validity of Section 3.1 (including Wescourt's right to receive Commissions on Subject Sales as provided therein), this Article 6, or Articles 7 or 8, each of which shall survive.

ARTICLE 7.

ATTORNEY-IN-FACT; INDEMNIFICATION

7.1 Attorney-in-Fact. In connection with any Sales consummated pursuant to the terms of this Agreement, Wescourt shall convey the Assets so sold pursuant to the terms of a bill of sale in substantially the form attached hereto as Exhibit A. Landmark hereby irrevocably constitutes and appoints Wescourt as Landmark's true and lawful attorney-in-fact, with full authority in the place and stead of Landmark, from time to time in Wescourt's discretion, to take any action and to execute any document or instrument which Wescourt may deem necessary or desirable to accomplish the purposes of this Agreement. Notwithstanding the foregoing, Wescourt shall not have any rights, duties or responsibilities except those expressly set forth herein, nor shall Wescourt have or be deemed to have any fiduciary relationship with Landmark, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement other than to act in good faith in connection herewith.

7.2 Settlement of Tax Lien. As of the date hereof, the Refinery Assets are subject to a tax lien in favor of the tax authorities of the County of Mesa, Colorado (the "Tax Lien") securing the obligation of Landmark to pay past due property taxes on the Refinery Assets in an aggregate amount of \$1,024,000 (the "Tax Obligation"). Pursuant to Landmark's appointment of Wescourt as Landmark's attorney-in-fact under Section 7.1, Wescourt shall have full authority, in the place and stead of Landmark, from time to time in Wescourt's discretion, to negotiate concerning the payment, discharge, settlement, compromise, or adjustment of the taxes giving rise to the Tax Lien and the release of the Tax Lien from all or any portion of the Refinery Assets; provided, in each case, that any such payment, discharge, settlement, compromise, or adjustment shall be at the sole cost and expense of Wescourt and its Affiliates and shall not be a Sales Expense that may be reimbursed out of the proceeds of Asset Sales.

7.3 Delegation of Duties. Wescourt may execute any of its duties under this Agreement by or through agents, employees or attorneys-in-fact. Wescourt shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

7.4 Reliance by Wescourt. Wescourt shall be fully justified in failing or refusing to take any action that it reasonably deems to be beyond the scope of its Sales-related obligations under this Agreement unless it shall first receive such advice or concurrence of Landmark and Chase as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by Landmark against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

7.5 Indemnification.

(a) Landmark Indemnification. Landmark hereby indemnifies the Wescourt Persons from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind whatsoever which may at any time (including at any time following the termination of this Agreement) be imposed on, incurred by or asserted against any such person in any way relating to or arising out of this Agreement, or any document contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted by any such Person under or in connection with any of the foregoing; except to the extent resulting from such person's gross negligence or willful misconduct.

(b) Wescourt Indemnification. Wescourt hereby indemnifies Landmark and its officers, directors, employees and agents (collectively, the "Landmark Persons") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind whatsoever which may at anytime (including at anytime following the termination of this Agreement) be imposed on, incurred by or asserted against any such person in any way relating to or arising out of a breach by the Wescourt Persons of this Agreement or the gross negligence or willful misconduct of any Wescourt Person in carrying out its obligations hereunder; except to the extent that the same results from the gross negligence or willful misconduct of Landmark.

7.6 Limitation of Liability. Notwithstanding any other provision hereof, no Wescourt Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement (except for a breach by a Wescourt Person of this Agreement or its own gross negligence or willful misconduct), or (b) be responsible in any manner to Chase or to any third party for any recital, statement, representation or warranty made by Landmark in this Agreement or in any certificate, report, or other document referred to or provided for in this Agreement. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL ANY WESCOURT PERSON BE LIABLE TO ANY PARTY FOR ANY CONSEQUENTIAL DAMAGES (MEANING DAMAGES THAT DO NOT ARISE OUT OF THE SUBJECT TRANSACTION BETWEEN THE PARTIES HERETO OR CHASE BUT DAMAGES THAT ARISE OUT OF THE DEALINGS BETWEEN LANDMARK OR CHASE AND A THIRD-PARTY), INCLUDING, WITHOUT LIMITATION, ARISING OUT OF THE SALE OF THE ASSETS, WHETHER UNDER A THEORY OF CONTRACT, TORT, INDEMNITY, OR OTHERWISE; OR PUNITIVE DAMAGES OF ANY KIND. IN NO EVENT SHALL THE TOTAL LIABILITY OF ALL WESCOURT PERSONS HEREUNDER EXCEED THE TOTAL COMMISSIONS PAID TO WESCOURT HEREUNDER, EXCEPT TO THE EXTENT THAT THE SAME RESULTS FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF WESCOURT.

ARTICLE 8.

GENERAL PROVISIONS

8.1 Assignment. No party may assign its rights and obligations under this Agreement except that Wescourt may assign all or a portion of its rights hereunder to one or more of its wholly-owned affiliates.

8.2 Communications. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given

(a) when delivered personally, or (b) 48 hours after being sent by facsimile with duplicate sent by courier service. Such communications shall be directed as follows:

To Wescourt at:

Fruita Marketing & Management, Inc.
c/o Wescourt Group, Inc.
2401 River Road
Grand Junction, Colorado 81505
Att'n: Keith Holder
Fax: (303) 241-5319

To Landmark at:

Landmark Petroleum, Inc.
1493 Highway 6 & 50
Fruita, Colorado 81521
Att'n: Mr. Richard Means
Fax: (303) 858-9194

with copies to:

The Chase Manhattan Bank, N.A.
One Chase Manhattan Plaza
Tenth Floor
New York, New York 10081
Att'n: Mr. Stanley M. Guralnick
Fax: (212) 422-6249

To Chase at:

The Chase Manhattan Bank, N.A.
One Chase Manhattan Plaza
New York, NY 10081
Att'n: Stanley M. Guralnick
Fax: (212) 422-6249

Any party may change its address for purposes of this section by giving the other parties notice of the new address in the manner set forth above.

8.3 Captions and Headings. The captions contained herein are for convenience and reference only and shall not affect the meaning, scope, intent, or interpretation of this Agreement or its provisions.

8.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings, written and oral with respect thereto. No

prior draft of this Agreement nor any parole evidence shall be admissible to prove the meaning or intent of any provision of this Agreement.

8.5 Amendment or Modification. This Agreement may only be amended, modified or supplemented by a written instrument specifically referring to this Agreement and signed by Wescourt, Landmark and Chase.

8.6 Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New York.

8.7 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of any such provision in any other jurisdiction, unless such prohibition or unenforceability frustrates the overall objective of this Agreement.

8.8 Counterparts. This Agreement will be executed in counterparts, and the several counterparts shall constitute one executed Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first written above.

FRUITA MARKETING & MANAGEMENT, INC.,
a Delaware corporation

By: _____
Keith R. Holder, President

LANDMARK PETROLEUM, INC.
a Delaware corporation

By: _____
Richard Means, Vice President

THE CHASE MANHATTAN BANK, N.A. EXECUTES BELOW TO CONSENT TO
THE FOREGOING AND TO AGREE TO THE SPECIFIC TERMS THEREOF
APPLICABLE TO IT:

THE CHASE MANHATTAN BANK, N.A.

By: _____
Its: _____

Schedule 1
to Marketing Agreement

MAJOR ASSETS

"Major Assets" means the following Refinery Assets:

1. Vacuum Crude Unit
2. Coker
3. Reformer
4. Hydrogen Plant
5. Hydrocracker
6. The Retained Real Property (as defined in the Purchase Agreement)

Exhibit A
to Marketing Agreement

BILL OF SALE

THIS BILL OF SALE ("Bill of Sale"), dated as of _____, is made by LANDMARK PETROLEUM, INC., a Delaware corporation ("Landmark") in favor of _____ ("Purchaser").

For good and valuable consideration, receipt of which is hereby acknowledged, Landmark hereby sells, conveys, transfers, assigns and delivers unto Purchaser, its successors and assigns, all of Landmark's right, title and interest in the assets described in attached Schedule 1 (the "Assets").

THE ASSETS ARE SOLD, CONVEYED, TRANSFERRED, ASSIGNED AND DELIVERED UNTO PURCHASER ON AN "AS IS, WHERE IS" BASIS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, except that Landmark hereby represents and warrants to the Purchaser that, upon delivery hereof, the Purchaser shall receive good and marketable title to the Assets, free and clear of all liens and encumbrances, other than those listed on Exhibit A, if any.

BY EXECUTING THIS BILL OF SALE, THE PURCHASER HEREBY ACKNOWLEDGES THAT THIS BILL OF SALE IS BEING EXECUTED ON BEHALF OF LANDMARK BY FRUITA MARKETING & MANAGEMENT, INC. ("WESCOURT") SOLELY IN ITS CAPACITY AS LANDMARK'S SALES REPRESENTATIVE UNDER A MARKETING AGREEMENT DATED FEBRUARY 28, 1994 AND THAT WESCOURT IS MAKING NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE ASSETS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, BY EXECUTING THIS BILL OF SALE, THE PURCHASER ACKNOWLEDGES AND AGREES THAT ITS SOLE RECOURSE IN THE EVENT OF ANY CLAIM OR DISPUTE WHATSOEVER WITH RESPECT TO OR ARISING OUT OF THE PURCHASER'S ACQUISITION OF THE ASSETS SHALL BE AGAINST LANDMARK, AND THAT THE PURCHASER SHALL NOT HAVE, AND HEREBY IRREVOCABLY WAIVES, ANY CLAIM AGAINST WESCOURT (WHETHER AS AGENT FOR LANDMARK OR IN ITS INDIVIDUAL CAPACITY).

To have and to hold the Assets unto the Purchaser, its successors and assigns, for its and their use forever.

IN WITNESS WHEREOF, Landmark has caused this Bill
of Sale to be executed as of the date first above written.

LANDMARK PETROLEUM, INC., a
Delaware corporation

By: _____
as Agent

By: _____
Its: _____

LIENS

1. Tax Lien

[Wescourt shall set forth here a description of any liens (including appropriate recording information) securing the Tax Obligations.]

Wescourt and Landmark agree that Wescourt may remove this reference in the Bill of Sale with respect to the Sale of any Asset upon the agreement of the County of Mesa to release such Asset from the such liens in connection with such Sale.

2. Chase Liens

[Wescourt shall set forth here a description of the Chase Liens (including appropriate recording information).]

This description of liens may include an express reference to the release provisions set forth in Section 5.1 of this Marketing Agreement. Alternatively, Wescourt and Landmark agree that Wescourt may remove this reference to the extent Wescourt obtains from Chase proper releases of the Chase Liens and records such releases in the proper filing location on or prior to the delivery of the Bill of Sale.

3. Additional Liens

[Wescourt shall set forth here any liens, claims or encumbrances affecting the Assets being conveyed which liens, claims or encumbrances are set forth in the Owners' Policy of Title Insurance delivered pursuant to the terms of the Asset Purchase Agreement.]

Wescourt and Landmark agree that Wescourt may remove the reference to any lien, claim or encumbrance that is properly satisfied and released of record on or prior to the date of the execution of the Bill of Sale.

Tab C

ASSET PURCHASE AGREEMENT

BETWEEN

WESCOURT GROUP, INC.
a Delaware corporation

and

LANDMARK PETROLEUM, INC.
a Delaware corporation

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Assets to third parties, in one or more sales, pursuant to a marketing agreement in the form of attached Exhibit A (the "Marketing Agreement").

2.3 Nonassumption of Liabilities. Buyer shall not assume, and shall not be liable to pay, perform or discharge when due, any Obligation of Seller known or unknown, anticipated or unanticipated, contingent or matured, with respect to the Transferred Assets arising on or prior to Closing or with respect to the Retained Assets at any time, including, without limitation, Obligations with respect to (i) Seller's employees (under any employment agreement, under any benefit plan, under any Legal Requirement applicable to employee benefits, health, or safety, or otherwise), (ii) the existence or disposal of Hazardous Materials on, in, or under the Assets, or (iii) any violation of Environmental Law with respect to the Assets (or the operation or decommission thereof). Notwithstanding the foregoing, from and after the Closing, Buyer shall be responsible for all real estate taxes and assessments and personal property taxes relating to the Transferred Assets and accruing on or after the date of Closing. Further, from and after Closing, Buyer shall be responsible for all utility charges relating to the Transferred Assets and Buyer shall notify all appropriate utilities as to the transfer of the Transferred Assets and instruct all such utilities to change their billing records accordingly.

3. CLOSING

3.1 Time and Place. The consummation ("Closing") of the transactions contemplated by this Agreement shall take place by facsimile exchange of all documents required to be delivered hereunder, with originals to follow immediately by overnight courier, on February 28, 1994, or as otherwise agreed by the parties in writing (the actual date of Closing, the "Closing Date"). Except as otherwise indicated, all such transactions will be deemed effective as of the close of business on the Closing Date.

3.2 Consideration. At Closing, in consideration of the sale, transfer, assignment, conveyance and delivery by Seller to Buyer of the Transferred Assets, Buyer will pay Fifty Thousand Dollars (\$50,000) (the "Purchase Price") to Seller. The sale, transfer, assignment, conveyance and delivery by Seller to Buyer of the Transferred Assets shall be subject to the Chase Liens on the terms set forth in the Chase Consent and subject to the Tax Lien on such terms as may be agreed upon by Buyer and the Treasurer of Mesa County, Colorado.

3.3 Allocation. The Purchase Price will be allocated among the Transferred Assets as determined by Buyer, in its reasonable discretion, after the Closing and notified to Seller within ninety (90) days after the Closing. Neither Seller nor Buyer will take a position in its tax returns which is inconsistent with such allocation. Seller and Buyer will comply with and furnish any information required by Section 1060 of the Code and the Treasury Regulations thereunder.

4. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that each of the following statements are true and correct:

4.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business and is in good standing as a foreign corporation in the State of Colorado.

4.2 Power and Authority. Seller has full corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

4.3 Execution, Delivery and Performance. The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary corporate action. The execution, delivery and performance by Seller of this Agreement do not violate, breach or cause a default under (a) its certificate of incorporation or bylaws, (b) any Legal Requirement, or (c) to the Knowledge of Seller, except with respect to any consents provided for in Section 4.5 (including, without limitation, the Chase Consent) and the terminations provided for in Section 7.5, any agreement, contract or instrument to which it is a party or by which it, or any of the Assets, is bound.

4.4 Binding Effect. Upon execution and delivery to Buyer, this Agreement and the other agreements to be executed and delivered by Seller at the Closing will each constitute a valid and binding Obligation of Seller, enforceable against Seller in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally or by general equitable principles.

4.5 Consents and Approvals. To the Knowledge of the Seller, other than the consents described in Schedule 4.5, no consent, approval, authorization, registration or qualification of or by any Person is

required in connection with the execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby.

4.6 Compliance with Legal Requirements. To the Knowledge of Seller, except as disclosed in the records of the Seller maintained at the Refinery (the "Refinery Records") (a) the ownership, operation and decommission by Seller of the Assets does not violate or infringe, and has not in the past during Seller's ownership of the Assets violated or infringed, any Legal Requirement, (b) there are no outstanding Orders against Seller, any Affiliate of Seller or any other Person relating to the ownership, operation, or decommission of the Assets, (c) none of the Assets is in violation of any Legal Requirement and (d) there are no special assessment, condemnation, zoning or other land-use regulation proceedings either instituted or planned to be instituted with respect to the Assets.

4.7 Litigation. To the Knowledge of Seller, except as disclosed in the Refinery Records, there is no Action pending or threatened with respect to the ownership, operation, or decommission of the Assets. Without limiting the foregoing, to the Knowledge of Seller, except as disclosed in the Refinery Records, there is no Action pending or threatened with respect to the ownership, operation, or decommission of the Assets (a) under any Environmental Law, or (b) directly or indirectly arising out of an Environmental Occurrence or the presence of Hazardous Materials or a condition of nuisance on, in, or under the Assets (including the Real Property).

4.8 Title to Transferred Assets. Seller has good and marketable title to the Transferred Assets other than the Real Property (as to which Buyer shall rely solely on the title policy to be obtained pursuant to Section 7.4), free and clear of Encumbrances except for (a) the Tax Lien, (b) the Chase Liens, (c) the Encumbrances listed on the Title Policy and reflected as encumbering Assets other than the Real Property, (d) the Encumbrances listed on searches of the Uniform Commercial Code Records obtained by Buyer, and (e) Encumbrances for current Taxes not yet due and payable. Other than this Agreement, the Chase Documents, and the agreements to be terminated pursuant to the Termination Agreements as a condition to the Closing, there are no contracts, commitments, understandings, or arrangements relating to the sale or other disposition of any Transferred Asset. To the Knowledge of Seller, Schedule 4.8 and the Refinery Records collectively contain a complete description of all Assets leased by Seller from or to any Person.

4.9 Permits. To the Knowledge of Seller, Schedule 4.9 and the Refinery Records contain a complete and accurate description of all Permits. To the Knowledge of Seller, except as disclosed in Schedule 4.9 or the Refinery Records, each Permit is in full force and effect, there has been no default or breach thereunder, and there is no pending or threatened proceeding under which any Permit may be revoked, terminated or suspended. To the Knowledge of Seller, other than the Permits described in Schedule 4.9 and the Refinery Records, Seller is not required to hold or maintain any license, permit, authorization, certification, or approval with respect to the ownership or sale of the Assets.

4.10 Insurance. To the Knowledge of Seller, Schedule 4.10 sets forth a complete and accurate list of all Insurance Policies, including, with respect to each Insurance Policy, carrier, type and amount of coverage, deductible (if any) and all claims thereunder (or under its predecessor policy, if any) in the 36-month period ending on the date of this Agreement.

4.11 Environmental Matters. To the Knowledge of Seller, the Refinery Records contain a complete description of each instance in which, during Seller's ownership of the Refinery, there has occurred in, on, from, or under any Asset (including the Real Property) a release, threatened release, disposal, discharge, spillage, loss, seepage, transport or migration of Hazardous Materials, other than releases incidental to the ordinary operation of the Assets that could not, either individually or in the aggregate, be reasonably expected to have a material adverse effect on the ownership, value or operation of the Assets, or upon Seller's operating results (each such event, an "Environmental Occurrence") and a description of the current status of any investigation thereof by any Governmental Body. Buyer has been provided with full access to originals or copies of all of Seller's documents concerning, and correspondence to or from any Governmental Body concerning, any Environmental Occurrence (the foregoing, "Environmental Records") including any investigation thereof.

4.12 Financial Records. Buyer has been provided with full access to originals or copies of all of Seller's books of account, documents, correspondence and other books and records with respect to the Assets (collectively, "Financial Records").

4.13 Taxes. All Returns required to be filed by Seller with respect to the ownership or operation of the Assets have been duly filed on a timely basis and such

Returns are true, complete and correct. Except for the Tax Obligations, all Taxes shown to be payable on the Returns or on subsequent assessments with respect thereto have been paid in full on a timely basis, and no other Taxes are payable by Seller or by any other Person with respect to the ownership or operation of the Assets for the periods covered by such Returns (whether or not shown on or reportable on such Returns) or with respect to any other period prior to the date of this Agreement. Seller has withheld and paid over all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor, or other Person. Except for the Tax Obligations, there are no pending questions relating to, nor claims asserted for, Taxes on the ownership or operation of the Assets. There are no outstanding agreements or waivers executed by or on behalf of Seller extending the statutory period of limitation applicable to any Return for any period.

4.14 Disclosure. Seller has provided Buyer with access to each of the documents described in this Article 4 (including the Refinery Records, the Environmental Records, and the Financial Records). No representations or warranties made by Seller in this Agreement and, to the Knowledge of Seller, no statement made by Seller in any document or other writing furnished by Seller to Buyer pursuant to this Agreement contain any untrue statement of material fact or omit to state any material fact necessary in order to make such statements not misleading.

5. REPRESENTATIONS AND WARRANTIES BY BUYER

Buyer hereby represents and warrants to Seller that the following statements are true and correct:

5.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer is qualified to do business and is in good standing as a foreign corporation in the State of Colorado.

5.2 Power and Authority. Buyer has full corporate power and corporate authority to enter into this Agreement and to perform its obligations hereunder.

5.3 Execution, Delivery and Performance. The execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary

corporate action. The execution, delivery and performance by Buyer of this Agreement do not violate, breach or cause a default under (a) its certificate of incorporation or bylaws, (b) any Legal Requirement, or (c) any agreement, contract or instrument to which it is a party or by which it, or any of its assets, is subject or bound.

5.4 Binding Effect. Upon execution and delivery to Seller, this Agreement will constitute a valid and binding Obligation of Buyer, enforceable against Buyer in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally or by general equitable principles.

5.5 Consents and Approvals. No consent, approval, authorization, registration or qualification of or by any Person is required in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby.

6. OBLIGATIONS PRIOR TO CLOSING

6.1 Negative Covenants. From the date of this Agreement until the Closing Date, Seller shall not take any action which, if taken immediately prior to the date hereof, would render any of Seller's representations and warranties inaccurate or incomplete in any respect. Without limiting the foregoing, from the date of this Agreement until the Closing Date Seller shall not, directly or indirectly, (a) make, create, incur, assume or suffer to exist any Encumbrance on or with respect to any Asset (other than those existing on the date hereof), or (b) sell, assign, lease, convey, transfer or otherwise dispose of any Asset.

6.2 Notice of Default. From the date of this Agreement until the Closing Date, Seller shall give written notice to Buyer of Seller's receipt of notice of any (a) default under, or dispute with respect to, any Permit, agreement, contract or instrument to which it is a party, including, without limitation, the Chase Documents, and (b) the commencement of, or any material development in, any Action involving Seller or any Asset, such notice to be given to Buyer prior to Closing or within five (5) Business Days after Seller learns of such event, whichever is sooner.

6.3 Employee Matters. Seller agrees that it shall make any terminations of its employees in full compliance with all applicable Legal Requirements, including, without limitation, to the extent applicable, the Worker Adjustment and Retraining Notification Act.

6.4 Maintenance of Permits/Insurance Policies. Notwithstanding the decommissioning of the Assets, from the date of this Agreement until the Closing Date, Seller shall maintain each Permit and Insurance Policy in full force and effect.

6.5 Partition of Assets. Promptly after the execution of this Agreement, Buyer and Seller shall commence such steps as are necessary or appropriate to accomplish the partition of the Retained Assets from the Transferred Assets, including the steps described below. Buyer and Seller shall diligently pursue such steps with the goal of completing such partition prior to Closing or, if not, as soon thereafter as is reasonably practicable.

(a) Real Property Survey. Buyer shall arrange for the preparation, by a surveyor or civil engineer licensed in the State of Colorado, of an "as-built" survey ("Survey") of the Real Property and the improvements located thereon, including, without limitation, lines for water, sewer, electricity, steam, gas, fuel oil, telephone and other utilities and the easements relating thereto. The Survey shall be reasonably acceptable to, and certified to, Buyer, Seller and Title Company, signed by the surveyor or civil engineer, and in sufficient detail to provide the basis for the title policy referred to in Section 7.4 without boundary, encroachment or survey exceptions.

(b) Partition of Real Property. Buyer and Seller shall take such steps as are necessary to effect the subdivision of the Real Property into the Retained Real Property and the Transferred Real Property in compliance with all Legal Requirements. Such steps shall include, to the extent applicable, (i) preparation by Buyer of a subdivision map, reasonably acceptable to Seller and Buyer, based on the Survey and (ii) the filing by Buyer of such map with all appropriate Governmental Bodies.

(c) Partition of Other Assets. Seller and Buyer shall cooperate in identifying the other steps that may be reasonably required to separate the Retained Assets and the Transferred Assets, including, without limitation, the segmentation and re-routing of piping, utilities, and other operational links between the Retained Assets and the Transferred Assets.

6.6 Cooperation in Due Diligence. From the date of this Agreement until the Closing Date, Seller shall reasonably cooperate with Buyer in connection with Buyer's due diligence review of the Assets. Without limiting the foregoing:

(a) Access to Records. Seller shall afford to Buyer and its employees, agents and authorized representatives full and free access to all Environmental Records, Records and Returns and to such other materials as Buyer may reasonably request (whether in the possession of Seller or its professional advisors). Seller shall ensure that its advisors fully cooperate with Buyer in connection with its review of the foregoing.

(b) Access to Assets. Seller shall permit Buyer and its employees, agents and authorized representatives, upon reasonable notice and during regular business hours, to enter the Refinery at their own risk for such purposes as Buyer may reasonably deem appropriate in connection with the transactions contemplated hereby. Seller agrees that, as part of such access, Buyer shall have the right to have a representative present at the Refinery during Seller's normal business hours to observe the decommissioning and partition of the Assets as contemplated hereby. Seller further agrees that Buyer and its representatives shall have the right to enter the Refinery at their own risk in connection with its environmental assessment of the Assets, including, without limitation, to make tests and take samples (including, in the case of the Real Property, soil borings and groundwater samples) in order to determine (i) if any Hazardous Materials exist therein or thereon (including on, in, or under the Real Property), and (ii) if any condition exists (including on, in, or under the Real Property) as to which a Governmental Body could require investigation or corrective action under any Environmental Law. Buyer shall indemnify and hold Seller and each Seller Indemnitee harmless from and against any and all Losses of Seller or any Seller Indemnitee arising out of the negligence or intentional misconduct of Buyer, its employees, agents or authorized representatives in conducting due diligence pursuant to this Section 6.6(b). Buyer shall provide to Seller, at Seller's request, copies of any environmental reports with respect to the Assets produced for Buyer by third party consultants (to the extent not subject, in Buyer's view, to the attorney-client privilege).

6.7 No Solicitation or Negotiation. From the date of this Agreement until the Closing Date, Seller will not directly or indirectly solicit, initiate or continue any discussions or negotiations with, or encourage or respond to any inquiries or proposals by, any Person (other than Buyer and its employees, representatives, and agents) concerning the sale or other disposition of all or any part of the Assets.

7. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of each of the following conditions. Buyer may waive any or all of these conditions by giving written notice of such waiver to Seller on or before the Closing Date.

7.1 Representations; Compliance with Covenants. All representations and warranties of Seller shall be true and correct in all material respects on the Closing Date as though restated on and as of that date. Seller shall have performed all covenants required by this Agreement to have been performed by Seller on or before the Closing Date.

7.2 Litigation Affecting Closing. No Action shall be threatened or pending by any Person other than Buyer which seeks to restrain or prohibit the consummation of the transactions contemplated by this Agreement.

7.3 Chase Consent. Seller shall have obtained a consent of Chase with respect to the transactions contemplated hereby in the form of attached Exhibit B (the "Chase Consent").

7.4 Title Policy. Buyer shall have received an irrevocable commitment for ALTA Owner's Policies of Title Insurance (Form B, rev. 10/17/70) in the aggregate amount of the Purchase Price, at no more than Title Company's standard rates, insuring fee simple title to the Transferred Real Property, all appurtenances related thereto and all improvements located thereon, subject only to the Chase Liens, the Tax Lien and such other exceptions as Buyer shall have approved in writing, and providing such special endorsements as Buyer may reasonably require, including, without limitation, a Subdivision Map Act endorsement.

7.5 Seller's Deliveries at Closing. On or before Closing, Seller shall have delivered to Buyer the following documents:

(a) An original grant deed for each parcel of the Transferred Real Property in substantially the form of attached Exhibit C, duly executed by Seller and acknowledged;

(b) An original Assignment of Rights in substantially the form of attached Exhibit D assigning from Seller to Buyer all rights of Seller under the contracts and leases described in Schedule 5 with respect to the Transferred Assets, duly executed by Seller;

(c) A counterpart original of the Marketing Agreement, duly executed by Seller;

(d) A counterpart original of the Management Agreement, duly executed by Seller;

(e) An original Termination Agreement in substantially the form of attached Exhibit E, with respect to each of the agreements described in Schedule 6, duly executed by the parties thereto;

(f) An original Bill of Sale in substantially the form of attached Exhibit F; and

(g) Such other documents and instruments as may be reasonably necessary to effectuate the transactions contemplated hereby.

7.6 Chase's Deliveries at Closing. On or before Closing, Chase shall have delivered to Buyer (a) a counterpart original of the Marketing Agreement, duly executed by Chase and (b) an original Chase Consent, duly executed by Chase.

8. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of each of the following conditions. Seller may waive any or all of these conditions by giving written notice of such waiver to Buyer on or before the Closing Date.

8.1 Representations; Compliance with Covenants. All representations and warranties of Buyer shall be true and correct in all material respects on the Closing Date as though restated on and as of that date. Buyer shall have performed all covenants required by this Agreement to have been performed by Buyer on or before the Closing Date.

8.2 Litigation Affecting Closing. No Action shall be threatened or pending by any Person other than Seller which seeks to restrain or prohibit the consummation of the transactions contemplated by this Agreement.

8.3 Buyer's Deliveries at Closing. At Closing, Buyer shall pay to Seller the Purchase Price by certified check or bank cashier's check. In addition, on or before Closing, Buyer shall have delivered to Seller (a) a counterpart original of the Marketing Agreement, duly executed by Buyer, (b) a counterpart original of the

Management Agreement, duly executed by Buyer, and (c) such other documents and instruments as may be reasonably necessary to effectuate the transactions contemplated hereby.

8.4 Partition of Assets. Seller shall be satisfied with the progress of, and prospects for completion of, the partition of the Assets (including the Retained Real Property and the Transferred Real Property) pursuant to Section 6.5.

9. COVENANTS AFTER CLOSING

9.1 Indemnification by Seller. From and after Closing, Seller shall indemnify and hold Buyer and each Buyer Indemnitee harmless from and against any and all Losses that Buyer or any Buyer Indemnitee may incur or suffer which arise out of or result from:

(a) any breach of any representation, warranty or covenant of Seller in this Agreement or in any agreement, document or other writing furnished by Seller to Buyer pursuant to this Agreement;

(b) the ownership, use, possession, operation, or decommissioning of the Transferred Assets prior to Closing;

(c) except for the Tax Obligations, any failure by Seller to pay Taxes with respect to the Transferred Assets that are allocable to any period prior to and including the Closing Date;

(d) any failure by Seller to comply with any applicable bulk transfer statute in connection with the transactions contemplated by this Agreement; or

(e) the existence, release, threatened release, or disposal of Hazardous Materials on, in, or under the Transferred Assets on or prior to Closing, or any violation of Environmental Law with respect to the Transferred Assets (or the operation or decommission thereof) on or prior to Closing. For purposes of the foregoing, any release or disposal of Hazardous Materials on, in, or under the Transferred Assets as to which timing cannot be established shall be deemed to have occurred prior to Closing.

9.2 Indemnification by Buyer. From and after Closing, Buyer shall indemnify and hold Seller and each

Seller Indemnatee harmless from and against any and all Losses that Seller or any Seller Indemnatee may incur or suffer which arise out of or result from:

(a) any breach of any representation, warranty or covenant of Buyer in this Agreement or in any document or other writing furnished by Buyer to Seller pursuant to this Agreement;

(b) the ownership, use, possession or operation of the Transferred Assets from and after Closing; or

(c) any failure by Buyer to pay Taxes with respect to the Transferred Assets that are allocable to any period after the Closing Date.

9.3 Indemnification Claims. If any liability is asserted or Action is commenced by a third Person against a party indemnified pursuant to this Article 9 ("Indemnatee") which might give rise to an obligation, on the part of the other party ("Indemnitor") to indemnify hereunder:

(a) Notice. The Indemnatee shall give prompt written notice to the Indemnitor of the asserted liability or Action, stating the nature, basis and (to the extent known) amount thereof; provided, however, that the failure of an Indemnatee to provide such notice to the Indemnitor shall not limit the right to indemnification of the Indemnatee unless such failure prejudices the Indemnitor's ability to contest such asserted liability or Action.

(b) Defense of Claim. Upon the written agreement of the Indemnitor that it is obligated to indemnify hereunder, the Indemnatee shall afford the Indemnitor the right to assume responsibility for the defense (including all proceedings on appeal or review which counsel for the defendant shall deem appropriate) of any such asserted liability or Action ("Indemnified Proceeding") involving a claim by a Person other than the Indemnitor or any of its respective Affiliates. The Indemnatee shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Indemnatee unless Indemnatee shall have reasonably concluded that such matter involves to a significant extent matters beyond the scope of the indemnity agreements contained herein or the Indemnitor shall not have agreed promptly, and in any event within thirty (30) days, after receipt of the notice described above that it is obligated to indemnify hereunder and it is ultimately determined that Indemnitor was required to provide

indemnification for the matters raised in such Indemnified Proceeding. The Indemnatee shall be kept fully informed of such matter at all stages thereof whether or not it is so represented. The parties hereto shall render to each other such assistance as may be reasonably required in order to ensure the proper and adequate defense of any such asserted liability or Action. The Indemnitor shall not make any settlement of any Action without the written consent of the Indemnatee, which consent shall not be withheld unless the Indemnatee shall have reasonably concluded that the claim or settlement thereof involves to a significant extent matters beyond the scope of the indemnity agreements contained herein.

(c) Buyer's Knowledge. Notwithstanding anything in this Agreement to the contrary, Seller shall not be liable to Buyer for any claim for indemnification for a breach of representation or warranty set forth in this Agreement of which breach Buyer had knowledge, as defined below, at the time of the Closing. For purposes of this section, Buyer shall be deemed to have "knowledge" if Buyer knew of the untruth of such representation or warranty. In the determining whether Buyer had such knowledge, Keith Holder shall be deemed to have read this Agreement and the attached schedules and exhibits and the knowledge of Keith Holder shall be imputed to Buyer.

9.4 Further Assurances.

(a) Generally. From and after Closing, Seller and Buyer shall, at their own expense, prepare, execute and deliver such further instruments of conveyance, sale, assignment or transfer, and shall take or cause to be taken such other or further action, as Seller or Buyer shall reasonably request at any time or from time to time in order to perfect, confirm or evidence the transactions contemplated hereby or to give effect to the provisions of this Agreement. If requested by Buyer, Seller agrees at Buyer's expense to prosecute or otherwise enforce in its own name for the sole benefit of Buyer any claims, rights, or benefits that are transferred to Buyer by this Agreement and that require prosecution or enforcement in Seller's name, including, without limitation, any warranty or indemnity rights with respect to any of the Assets. Any prosecution or enforcement of any claims, rights, or benefits under the preceding sentence shall be solely at Buyer's expense, unless the prosecution or enforcement is in connection with an indemnification obligation of Seller pursuant to Section 9.1.

(b) Additional Instruments; Consents. The parties recognize that a separate instrument or instruments of assignment (in addition to the Assignment) and/or termination (in addition to the Termination Agreements) may be necessary or appropriate with respect to certain of the contracts, leases, agreements, undertakings and commitments that are part of or applicable to the Transferred Assets, or that the signatures of all parties to the Assignment and the Termination Agreements may not be obtained on or prior to Closing. If any such instruments or additional signatures are required after the Closing in connection with the Assignment of Rights, the parties agree to use their best efforts to obtain all such instruments and/or additional signatures promptly after the Closing. If additional signatures are required to be obtained after Closing with respect to any instrument of consent or assignment, the lack of such signatures shall not affect the validity of such instrument to effectuate the consent or assignment described therein at Closing as with respect to each of the parties that has then executed such instrument, and such instrument shall thereafter become effective as to each additional signatory as and when signed by such additional signatory.

(c) Partition of Assets. The parties recognize that certain of the steps under Section 6.5 that are necessary or appropriate to partition the Retained Assets from the Transferred Assets may not be completed on or prior to the Closing. In such event, the parties agree to diligently pursue all such outstanding steps with the goal of completing such partition as soon after the Closing as is reasonably practicable.

(d) Certain Easements.

(i) Seller acknowledges that it may be necessary for Buyer to acquire certain easements after Closing in connection with the operation of the Transferred Assets, including easements to assure the continued supply of utilities to the Transferred Assets and/or to expand such supply in connection with the operation of such Assets after the Closing. If so requested during the six month period following the Closing, Seller agrees to grant to Buyer such easements and rights of way with respect to the Retained Real Property as Buyer may deem reasonably necessary from time to time.

(ii) Buyer acknowledges that it may be necessary for Seller to acquire certain easements after Closing in connection with the effective use (in a decommissioned state) or disposition of the Retained Assets, including easements to assure the continued supply of

utilities to the Retained Assets and/or to expand such supply in connection with the maintenance of such Assets in a decommissioned state, and/or to insure the access of the Retained Real Property to a public highway. If so requested during the six month period following the Closing, Buyer agrees to grant to Seller such easements and rights of way with respect to the Transferred Real Property as Seller may deem reasonably necessary from time to time. In connection with the foregoing, Buyer agrees to permit Seller to utilize after the Closing the utility systems included within the Transferred Personal Property to the extent that use thereof is required in connection with the maintenance of the Retained Assets in a decommissioned state. The use described in the preceding sentence will be without charge, but any resulting utility payments will be the sole responsibility of Seller.

(e) Permits. Seller acknowledges that it may be necessary for Buyer to acquire certain permits after Closing in connection with the operation of the Transferred Assets. If so requested after the Closing, Seller shall assign to Buyer such Permits as (a) are assignable, (b) relate to the Transferred Assets, and (c) are not required for maintenance of the Retained Assets in a decommissioned state. Seller shall also cooperate with Buyer to the extent the Buyer reasonably requests in connection with divisions of existing Permits or Buyer's applications for additional permits that are required as a result of the transactions contemplated hereby for the post-Closing operation of the Transferred Assets.

(f) Marketing Agreement. From and after Closing, Buyer and Seller shall cooperate to effect the sale of the Retained Assets under and as provided in the Marketing Agreement.

9.5 Access. After Closing, for so long as the Management Agreement remains in effect, Seller will upon reasonable notice and during business hours afford Buyer such access to the Records and Returns as Buyer may reasonably require in connection with the resolution of tax questions, the conduct of tax audits, and any related matters. Seller will not, during such period, dispose of or destroy any material Records or Returns without providing thirty (30) days' prior written notice to Buyer so that Buyer may at its expense examine, copy, or repossess the Records and Returns to be disposed of or destroyed.

10. GENERAL PROVISIONS

10.1 Termination.

(a) Cause for Termination. This Agreement and the transactions contemplated hereby may be terminated prior to Closing:

(i) By mutual written agreement of Buyer and Seller at any time;

(ii) By either Buyer or Seller if Closing has not occurred on or before March 15, 1994 and the party electing to terminate is not in breach of its obligations hereunder;

(iii) By Buyer if there has been a casualty to or condemnation of any of the Assets prior to Closing entitling Buyer to terminate this Agreement pursuant to Section 10.16;

(iv) By Buyer if there has been a material breach on the part of Seller of the representations, warranties, or covenants of Seller in this Agreement; or

(v) By Seller if there has been a material breach on the part of Buyer of the representations, warranties, or covenants of Buyer in this Agreement.

(b) Effect of Termination. Upon any termination of this Agreement pursuant to Section 10.1(a), this Agreement shall be void and neither Buyer nor Seller, nor any other Buyer Indemnatee or Seller Indemnatee, shall have any liability hereunder except that Section 6.6(b) and Section 10.2 shall survive such termination. A breaching party shall be liable for such damages, costs and expenses as are the direct and proximate result of its breach but shall not be liable for or on account of any consequential damages of any kind suffered as a result thereof.

10.2 Costs and Expenses. Except as otherwise provided herein or in the Marketing Agreement, the parties shall each bear their own costs and expenses (including attorneys' fees) incurred in connection with the negotiation and preparation of this Agreement and consummation of the transactions contemplated hereby. Seller shall pay the cost of all title insurance premiums and endorsements and all surveys associated therewith. All sales, use and documentary taxes payable in connection with the

transactions contemplated hereby and any escrow fees associated herewith shall be shared equally by Buyer and Seller.

10.3 Communications. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered personally, or (b) 48 hours after being sent by facsimile with duplicate sent by courier service. Such communications shall be directed as follows:

To Seller at:

Landmark Petroleum, Inc.
1493 Highway 6 & 50
Fruita, Colorado 81521
Att'n: Mr. Richard Means
Fax: (303) 858-9194

with a copy to:

Bracewell & Patterson
711 Louisiana, Suite 2900
Houston, TX 77002-2781
Att'n: Richard Rice
Fax: (713) 221-1212

To Buyer at:

Wescourt Group, Inc.
2401 River Road
Grand Junction, Colorado 81505
Att'n: Keith Holder
Fax: (303) 329-2902

with a copy to:

Morrison & Foerster
345 California Street
San Francisco, CA 94104
Att'n: Ken Siegel, Esq.
Fax: (415) 677-7522

Any party may change its address for purposes of this Section 10.3 by giving the other party notice of the new address in the manner set forth above.

10.4 Schedules and Exhibits. The schedules and exhibits attached hereto are made a part hereof. References herein to this Agreement include such schedules and exhibits.

10.5 Captions and Headings. The captions contained herein are for convenience and reference only and shall not affect the meaning, scope, intent, or interpretation of this Agreement or its provisions.

10.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings, written and oral with respect thereto. No prior draft of this Agreement nor any parole evidence shall be admissible to prove the meaning or intent of any provision of this Agreement.

10.7 Amendment or Modification. This Agreement may only be amended, modified or supplemented by a written instrument specifically referring to this Agreement and signed by Seller and Buyer.

10.8 Waiver. The failure of either party to enforce at any time any provision of this Agreement will not be construed to be a waiver of any such provision and will not affect the validity of this Agreement or any part hereof or the right of either party to enforce such provision. No waiver of any breach hereof will be construed to be a waiver of any other breach.

10.9 Assignment. Neither party may assign its rights and obligations under this Agreement either prior to or after the Closing except that Buyer may assign all or a portion of its rights hereunder to one or more Affiliate of Buyer; provided, that, as between Buyer and Seller, no such assignment by Buyer shall relieve Buyer of any of its obligations under this Agreement. Without limitation of the foregoing, Buyer may elect, by written notice to Seller on or prior to Closing, to have the Transferred Real Property transferred to one Affiliate of Buyer and the other Transferred Assets transferred to another Affiliate of Buyer.

10.10 Parties in Interest. Subject to Section 10.9, this Agreement will inure to the benefit of and be binding upon Seller and Buyer and their respective successors, assigns and legal representatives. Nothing in this Agreement express or implied is intended to confer upon any Person other than Buyer, Seller and, to the limited extent expressly provided herein, the Buyer Indemnitees and the Seller Indemnitees, any right or remedy by reason of this Agreement.

10.11 Survival. The representations and warranties of Buyer and Seller in this Agreement shall survive only until the second (2nd) anniversary of the Closing Date and any claim for breach of any of such representations and warranties made after that date shall be barred; provided, however, that the representations, warranties, covenants and indemnities of Seller with respect to the environmental matters (including, without limitation, pursuant to Section 4.11) and with respect to Taxes (including, without limitation, pursuant to Section 4.13) shall continue in full force and effect until the fourth (4th) anniversary of the Closing Date and any claim for breach of any of such representations and warranties made after that date shall be barred.

10.12 Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New York.

10.13 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of any such provision in any other jurisdiction, unless such prohibition or unenforceability frustrates the overall objective of this Agreement.

10.14 Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof.

10.15 Finder's or Broker's Fees. Each of the parties represents and warrants that it has not dealt with any broker or finder in connection with any of the transactions contemplated by this Agreement and that, insofar as it knows, no broker or other Person is entitled to any commission or finder's fee in connection with any of these transactions. Each of the parties shall be responsible for, and shall indemnify and hold the other party harmless against, the fees of its finder's or broker's, if any.

10.16 Risk of Loss. Seller shall promptly notify Buyer if, prior to Closing, any of the Transferred Assets (a) are damaged or destroyed by casualty, or (b) taken pursuant to the power of eminent domain (or any proceeding with respect to such a taking is instituted or threatened). Buyer shall have the right, at its option, to terminate this Agreement by delivering notice of such termination to Seller not later than ten (10) Business Days after the date Buyer

receives any such notice from Seller. In the event Buyer does not elect to terminate this Agreement by reason hereof, then Closing shall occur and the Purchase Price shall not be reduced by any costs associated with such casualty or taking.

10.17 Bulk Sales. The parties hereby waive compliance with the provisions of any bulk transfer or bulk sales law of any jurisdiction.

10.18 Counterparts. This Agreement will be executed in counterparts, and the several counterparts shall constitute one executed Agreement.

10.19 DISCLAIMER. EXCEPT AS IS EXPRESSLY STATED IN THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION HERewith TO THE CONTRARY, SELLER HEREBY DISCLAIMS TO THE FULLEST EXTENT ALLOWED BY LAW ANY AGREEMENT, WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, EXPRESSED, IMPLIED, OR ARISING BY LAW, PAST, PRESENT OR FUTURE, OF, AS, TO OR CONCERNING (I) THE NATURE AND CONDITION OF THE ASSETS AND THE SUITABILITY THEREOF FOR ANY AND ALL USES WHICH BUYER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS CONSTRUCTED THEREON, INCOME TO BE DERIVED THEREFROM OR COSTS TO BE INCURRED WITH RESPECT THERETO, MERCHANTABILITY, HABITABILITY OR ANY OTHER MATTER RELATING THERETO OR AFFECTING SAME; (II) THE QUALITY AND TYPE OF CONSTRUCTION AND THE CURRENT CONDITION OF ANY IMPROVEMENTS LOCATED THEREON; AND (III) THE COMPLIANCE OF THE ASSETS WITH THE OPERATION AND USE OF THE ASSETS WITH ANY LAWS, ORDINANCES, RULES OR REGULATIONS OF ANY GOVERNMENTAL BODY. BUYER ACKNOWLEDGES ITS INSPECTION AND SATISFACTION WITH THE ASSETS AND EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY OTHER AGREEMENT EXECUTED IN CONNECTION HERewith TO THE CONTRARY WAIVES ALL CLAIMS, IF ANY NOW OR HEREAFTER ARISING. BUYER ACKNOWLEDGES THAT IT IS AWARE IN GENERAL TERMS OF SELLER'S FINANCIAL CONDITION INCLUDING THE FACT THAT CURRENTLY ITS LIABILITIES MAY EXCEED ITS ASSETS. AS BETWEEN BUYER AND SELLER, BUYER AGREES TO LOOK SOLELY TO THE OBLIGATIONS, REPRESENTATIONS AND WARRANTIES OF SELLER IN THIS AGREEMENT AND THE OTHER AGREEMENTS AND DOCUMENTS CONTEMPLATED HEREBY AND RELEASES SELLER FROM ANY CLAIM THAT BUYER MAY HAVE EXCEPT TO THE EXTENT THAT SUCH CLAIM ARISES OUT OF A BREACH OF ANY SUCH OBLIGATION, REPRESENTATION, OR WARRANTY BY SELLER.

IN WITNESS WHEREOF the parties hereto have executed
this Agreement on the date first written above.

WESCOURT GROUP, INC.

By 
Keith R. Holder, President

LANDMARK PETROLEUM, INC.

By _____
Richard Means, Vice President

IN WITNESS WHEREOF the parties hereto have executed
this Agreement on the date first written above.

WESCOURT GROUP, INC.

By _____
Keith R. Holder, President

LANDMARK PETROLEUM, INC.

By Richard L. Means
Richard Means, Vice President

Schedules and Exhibits

Schedule 1	- Definitions
Schedule 2	- Transferred Personal Property
Schedule 3	Transferred Real Property
Schedule 4.5	- Consents
Schedule 4.8	- Leased Assets
Schedule 4.9	- Permits
Schedule 4.10	- Insurance
Schedule 5	- Assigned Agreements
Schedule 6	- Terminated Agreements
Exhibit A	- Marketing Agreement
Exhibit B	- Chase Consent
Exhibit C	- Grant Deed
Exhibit D	- Assignment of Rights
Exhibit E	- Termination Agreement
Exhibit F	- Bill of Sale

Schedule 1
to Asset Purchase Agreement

DEFINITIONS

"Action" means any action, suit, claim, arbitration, judgment, or legal, administrative, or other proceeding, or governmental investigation.

"Affiliate" means, as to any Person, any Person which, directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") means, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Asset Purchase Agreement (including all exhibits and schedules hereto), as the same may hereafter be amended from time to time.

"Apportionment Statement" has the meaning specified in Section 3.3(b).

"Assets" means all of Seller's right, title and interest in and to all property and assets of every description and wherever situated connected with the Refinery on the date hereof or purchased by Seller on or prior to Closing for use in connection with the Refinery (whether or not delivered), including, without limitation, the following:

(a) Real Property. The real property located at 1493 Highway 6 & 50, Fruita, Colorado 81521 consisting of the Retained Real Property and the Transferred Real Property (collectively, the "Real Property");

(b) Personal Property. All personal property located on the Real Property or used or usable by Seller in connection with the operation of the Refinery, including, without limitation, (i) all refinery and office equipment, machinery, spare-parts, tools, manuals, testing and maintenance devices and supplies, (ii) all computer hardware and software and (iii) all automobiles and vehicles, together with all warranties and guaranties pertaining thereto and all maintenance records, plans and specifications therefore (collectively, the "Personal Property");

(c) Contracts. All of Seller's contracts, agreements, contract rights, warranty rights, license agreements, and other rights with respect to the ownership and operation of the Refinery, including, all of Seller's rights with respect to utilities provided to the Refinery (collectively, the "Contracts");

(d) Permits. All federal, state, local and foreign governmental licenses, permits, authorizations and approvals held by Seller with respect to the ownership or operation of the Refinery, including, without limitation, all such licenses, permits, authorizations and approvals relating to (i) utilities, (ii) the ownership, construction, operation, use and occupancy of any of the Assets, including, without limitation, building, zoning, subdivision, sewer, environmental matters, wetlands and drainage, (iii) the manufacture, processing, distribution, use, treatment, storage, recycling, disposal, release, transport or handling of Hazardous Materials and (iv) transportation of goods to and from the Refinery (intrastate or interstate) (collectively, the "Permits"); and

(e) Insurance. All of Seller's rights under insurance policies or other arrangements relating to the Refinery (collectively, the "Insurance Policies").

"Business Day" means a date that is not a Saturday, Sunday or bank holiday in the State of Colorado.

"Buyer" means Wescourt Group, Inc., a Delaware corporation.

"Buyer Indemnatee" means, collectively, (a) Buyer, (b) each Affiliate of Buyer, and (c) each officer, director, employee and agent of any Person described in clauses (a) or (b).

"Chase" means The Chase Manhattan Bank, N.A., a national banking association.

"Chase Consent" has the meaning specified in Section 7.3.

"Chase Documents" means the Amended and Restated Credit Agreement, dated as of June 24, 1992, between Chase and Seller and all agreements and other instruments executed by Chase and/or Seller as security for or in connection therewith or pursuant thereto, in each case as amended prior to the date hereof including, without limitation, the

Security Instruments and the Option Agreement (Chase) (as such terms are defined in such Amended and Restated Credit Agreement).

"Chase Liens" means the liens and security interests with respect to the Assets granted by Seller to Chase pursuant to the Chase Documents.

"Closing" has the meaning specified in Section 3.1.

"Closing Date" has the meaning specified in Section 3.1.

"Code" means the Internal Revenue Code of 1986, as amended.

"Encumbrance" means, with respect to any tangible or intangible asset, any encumbrance, security interest, mortgage, lien, pledge, charge, equity, claim, easement, right-of-way, covenant, or restriction.

"Environmental Occurrence" has the meaning specified in Section 4.11.

"Environmental Laws" means any and all federal, state, local and foreign laws (statutory or common), rules, regulations, ordinances, codes, Orders, permits, or licenses relating to human health or the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, recycling, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) ("CERCLA"), as amended, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

"Environmental Records" has the meaning specified in Section 4.11.

"GAAP" means United States generally accepted accounting principles, as in effect on the date hereof.

"Governmental Body" means any federal, state, local entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any department, commission, board, bureau, agency, court or other instrumentality.

"Hazardous Material" means any material, substance, chemical or waste which is (a) listed, defined or otherwise identified as hazardous, toxic or dangerous or regulated under any Environmental Law, including, without limitation, crude oil, petroleum (and any petroleum product or by-product), asbestos, and polychlorinated biphenyls, (b) a basis for liability under any common law theory or (c) potentially injurious to human health or the environment.

"Indemnified Proceeding" has the meaning specified in Section 9.3.

"Indemnitee" has the meaning specified in Section 9.3.

"Indemnitor" has the meaning specified in Section 9.3.

"Insurance Policies" has the meaning specified in the definition of Assets.

"Knowledge of Seller" means the actual knowledge (after reasonable inquiry) of each of the officers and individuals with executive responsibility for any aspect of the Assets or the business of Seller.

"Legal Requirement" means, as to any Person, any law (statutory or common), rule, regulation, ordinance, Order, permit, or license, including, without limitation, any Environmental Law, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject, including, without limitation, in the case of Seller, to which the ownership, operation, or decommission of Assets are subject.

"Losses" means demands, claims, losses, damages, injuries, costs, liabilities, obligations, fines, penalties, and legal and administrative investigations and proceedings and any associated costs and expenses (including, without limitation, court costs, reasonable attorneys', experts' and consultants' fees). Without limiting the foregoing, "Losses" includes all necessary costs of investigation and response incurred with respect to any violation of Environmental Law, the condition of the Assets, or the

existence, release, or disposal of Hazardous Materials on, in, or under the Assets, or any release or threatened release resulting therefrom.

"Management Agreement" means the Management Agreement, dated the date hereof, between Seller and an affiliate of Buyer with respect to the management of the Retained Assets after the Closing.

"Marketing Agreement" has the meaning specified Section 2.2.

"Obligation" means, as to any Person, any liability or obligation of such Person of any type whatsoever, known or unknown, anticipated or unanticipated, contingent or matured.

"Order" means any judgment, decree, writ, stipulation, injunction, determination, award, or other order or ruling of any Governmental Body.

"Permits" has the meaning specified in the definition of Assets.

"Person" means any individual, corporation, partnership, firm, Governmental Body or other entity, whether acting in an individual, fiduciary or any other capacity.

"Personal Property" has the meaning specified in the definition of Assets.

"Purchase Price" has the meaning specified in Section 3.1.

"Real Property" has the meaning specified in the definition of Assets.

"Records" has the meaning specified Section 4.12.

"Refinery" has the meaning specified in Recital A.

"Retained Assets" has the meaning specified in Recital B.

"Retained Real Property" means the Real Property described in the attached Schedule 3 (and related map) as Parcel 2 of Tract A, including, without limitation, all of Seller's right, title and interest in and to (a) all rights, privileges and easements appurtenant thereto, including (i) all minerals, oil, gas and other hydrocarbon substances

thereon and thereunder, (ii) all development rights, air rights, water, water rights and water stock relating thereto and (iii) all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment thereof and (b) all improvements and fixtures, owned or leased, that are located thereon.

"Returns" means all reports, estimates, declarations of estimated tax, information statements and returns relating to, or required to be filed in connection with, any Taxes, including information returns or reports with respect to backup withholding and other payments to third parties.

"Seller" means Landmark Petroleum, Inc., a Delaware corporation.

"Seller Indemnitee" means, collectively, (a) Seller, (b) each Affiliate of Seller, and (c) each officer, director, employee and agent of any Person described in clauses (a) or (b).

"Survey" has the meaning specified in Section 6.5(a).

"Tax Lien" means the Lien in favor of the tax authorities of the County of Mesa, Colorado securing the obligation of Seller to pay the Tax Obligations.

"Tax Obligations" means the obligations of the Seller with respect to certain past due property Taxes payable to the County of Mesa, Colorado in an aggregate amount not exceeding \$1,024,000.

"Taxes" means all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limitation, all income or profits taxes (including, without limitation, federal income taxes and state income taxes), payroll and employee withholding taxes, unemployment insurance, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, stamp taxes, environmental taxes or fees, transfer taxes, workers' compensation, Pension Benefit Guaranty Corporation premiums and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which Seller or any person with respect to the Business and the Assets is required to pay, withhold or collect.

"Title Company" means First American Title Insurance Co., Ltd.

"Transferred Assets" means the Transferred Real Property and the Transferred Personal Property.

"Transferred Personal Property" means the Personal Property described in Schedule 2. To the extent that any such Personal Property is being leased by Seller, Seller shall be deemed to have conveyed all of its interest in and under each applicable lease.

"Transferred Real Property" means the Real Property described in the attached Schedule 3 (and related map) as Parcel 1 of Tract A, including, without limitation, all of Seller's right, title and interest in and to (a) all rights, privileges and easements appurtenant thereto, including (i) all minerals, oil, gas and other hydrocarbon substances thereon and thereunder, (ii) all development rights, air rights, water, water rights and water stock relating thereto and (iii) all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment thereof and (b) all improvements and fixtures, owned or leased, that are located thereon.

Schedule 2
to Asset Purchase Agreement

TRANSFERRED PERSONAL PROPERTY

PERSONAL PROPERTY LOCATED ON TRANSFERRED REAL PROPERTY

The following Personal Property to the extent, but only to the extent, such property is located on the Transferred Real Property:

Administration Building: All office furniture and equipment

Laboratory: All laboratory equipment

Shop/Maintenance/Warehouse Areas: All equipment, tools & parts in any of these areas

Tracks 1, 2, 3 & 6 (to the extent such tracks are located on the Transferred Real Property)

Track 4 (to the extent such tracks are located on the Transferred Real Property), including unloading/loading equipment

Track 5 (to the extent such tracks are located on the Transferred Real Property), including unloading/loading equipment

Water Rights: Shares From Headgate 540

5.1 CFS Absolute Water Right And 4.9 CFS Conditional Water Right Decreed By The District Court Of Colorado For Water Division No. 5 In Case No. 88CW086, As Awarded On April 13, 1972, In Civil Action No. 13368 By Mesa County District Court.

All necessary parts and components located on the Transferred Real Property for all utility systems applicable to the Transferred Assets, including the following systems:

Electricity
Natural Gas
River Water Intake System & Clarification Equipment
Fire Water

Gasoline Blending Facility and all associated pumps, piping and equipment

LPG & Butane Truck Unloading/Loading Sites & Equipment:

<u>Tank #</u>	<u>Service</u>	<u>Vol - bbls</u>	<u>Comments</u>
4402	Sweet LPG	1,000	Located By Track 6
4403	Sweet LPG	1,000	Located By Track 6
4431	Butane	1,371	Located By Track 6
4432	Butane	1,371	Located By Track 6

Truck Terminal, Loading Rack, Tanks & Equipment:

<u>Tank #</u>	<u>Service</u>	<u>Vol - bbls</u>	<u>Comments</u>
2001	Premium Unleaded	1769	
2002	Jet A Fuel	1989	
1003	Super Diesel	1066	
1012	Super Diesel	1065	

PERSONAL PROPERTY LOCATED ON RETAINED REAL PROPERTY

The following Personal Property to the extent, whether or not such Personal Property is located on the Retained Real Property or the Transferred Real Property"

Track 2: Unloading/Loading Equipment

Track 3: Unloading/Loading Equipment

Natural Gasoline Unloading/Loading Equipment

All Tanks in Area 44 less than 11,000 bbl, and the following Tanks in Area 44 exceeding 11,000 bbl:

<u>Tank #</u>	<u>Service</u>	<u>Vol - bbls</u>
313	Alcohol Additive	
520	Fuel Oil	499
521	Fuel Oil	499
538	Acid Sludge Oil	524
652	Flush Oil	477
1030	API Oil	993
1031	Acid Sludge Oil	993
2032	Acid Sludge Oil	1,989
2033	Naphtha	1,992
2034	Reclaim Oil	2,012
2035	Reclaim Oil	2,012
2036	Reclaim Oil	2,006
2039	Acid Sludge Oil	2,011
2042	Coker Kerosene	2,391
2072	#2 Diesel	2,297
4051	Premium Unleaded	3,886

5041	Coker Kerosene	4,845
10053	Syncrude	9,773
10054	Vacuum Gas Oil	9,773
10055	Vacuum Gas Oil	9,724
10064	Syncrude	9,467
10070	Coker Naphtha	9,623
10071	Syncrude	9,623
10073	Syncrude	9,623

The following Butane/LPG Tanks In Area 44:

<u>Tank #</u>	<u>Service</u>	<u>Vol - bbls</u>	<u>Comments</u>
4401	Sweet LPG	416	Pressure Bottle
4408	C4 - C6	1,066	Pressure Bottle
4409	C4 - C6	956	Pressure Bottle
4420	Sour LPG	1,360	Pressure Bottle
4421	Sour LPG	1,360	Pressure Bottle
4422	Sour LPG	1,360	Pressure Bottle
4423	Sour LPG	1,360	Pressure Bottle

The following tanks In Area 60:

<u>Tank #</u>	<u>Service</u>	<u>Vol - bbls</u>
1010	Air Stripper	956
1011	Air Stripper	962

All pumps & piping associated with any of the foregoing Tanks

Schedule 3
to Asset Purchase Agreement

TRANSFERRED REAL PROPERTY

PARCEL 2 OF TRACT A (REVISED 1/27/94)

A parcel of land located in the SE1/4 of Section 2, the NE1/4 of Section 10, and Section 11 Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00" E a distance of 2629.24 feet for a basis of bearings, with all bearings contained herein relative thereto; thence S 00°07'00" E a distance of 872.57 feet along the East line of the Northeast quarter (NE1/4) of Section 11 to a point on the Southerly right-of-way line of the Denver and Rio Grand Railroad; thence North 56 degrees 41 minutes 00 seconds West (N 56°41'00" W), a distance of 1473.79 feet along said railroad right-of-way; to the TRUE POINT OF BEGINNING; thence South 33 degrees 53 minutes 32 seconds West (S 33°53'32" W), a distance of 384.57 feet; thence South 56 degrees 34 minutes 02 seconds East (S 56°34'02" E), a distance of 665.06 feet; thence South 33 degrees 49 minutes 38 seconds West (S 33°49'38" W), a distance of 472.87 feet; thence North 56 degrees 35 minutes 40 seconds West (N 56°35'40" W), a distance of 258.17 feet; thence South 33 degrees 24 minutes 17 seconds West (S 33°24'17" W), a distance of 115.46 feet; thence South 57 degrees 40 minutes 48 seconds East (S 57°40'48" E), a distance of 52.07 feet; thence North 33 degrees 24 minutes 17 seconds East (N 33°24'17" E), a distance of 90.58 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 414.12 feet; thence North 52 degrees 42 minutes 15 seconds East (N 52°42'15" E), a distance of 81.06 feet; thence South 58 degrees 04 minutes 10 seconds East (S 58°04'10" E), a distance of 261.08 feet; thence South 07 degrees 30 minutes 19 seconds West (S 07°30'19" W), a distance of 94.49 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 418.13 feet; thence South 31 degrees 19 minutes 33 seconds West (S 31°19'33" W), a distance of 240.00 feet; thence South 58 degrees 50 minutes 11 seconds East (S 58°50'11" E), a distance of 115.86 feet; thence North 33 degrees 42 minutes 50 seconds East (N 33°42'50" E), a distance of 234.64 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 289.73 feet; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 842.93 feet; thence South 70 degrees 59 minutes 23 seconds West (S 70°59'23" W), a distance of 383.97 feet; thence South 00 degrees 06 minutes 58 seconds East (S 00°06'58" E), a distance of 374.74 feet; thence North 89 degrees 53 minutes 00 seconds East (N 89°53'00" E), a distance of 363.28 feet; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 611.55 feet; thence South 44 degrees 02 minutes 01 seconds West (S 44°02'01" W), a distance of 564.53 feet to a point on the North bank of the Colorado River; thence the following 4 courses along the North bank of the Colorado River; (1) North 61 degrees 31 minutes 53 seconds West (N 61°31'53" W), a distance of 541.72 feet; (2) North 85 degrees 19 minutes 06 seconds West (N 85°19'06" W), a distance of 615.61 feet; (3) South 69 degrees 33 minutes 17 seconds West (S 69°33'17" W), a distance of 1015.56 feet; (4) South 45 degrees 30 minutes 57 seconds West (S 45°30'57" W), a distance of 384.19 feet to a point on the Northerly right-of-way of Interstate 70, thence the following 4 courses along the Northerly right-of-way of Interstate 70; (1) along a curve to the right having a radius of 11359.20 feet, arc length of 4261.46 feet, delta angle of 21 degrees 29 minutes 41 seconds (21°29'41"), a chord bearing of North 51 degrees 44 minutes 01 seconds West (N 51°44'01" W), and a chord length of 4236.51 feet; (2) North 40 degrees 59 minutes 10 seconds West (N

40°59'10" W), a distance of 400.50 feet, (3) North 32 degrees 26 minutes 20 seconds West (N 32°26'20" W), a distance of 309.30 feet, (4) along a curve to the left having a radius of 3969.70 feet, arc length of 130.31 feet, delta angle of 1 degree 52 minutes 51 seconds (1°52'51"), a chord bearing of North 44 degrees 10 minutes 50 seconds West (N 44°10'50" W), and a chord length of 130.30 feet; thence leaving said right-of-way North 00 degrees 50 minutes 33 seconds West (N 00°50'33" W), a distance of 644.86 feet; thence North 89 degrees 09 minutes 42 seconds East (N 89°09'42" E), a distance of 22.71 feet; thence South 32 degrees 55 minutes 25 seconds East (S 32°55'25" E), a distance of 264.97 feet; thence South 11 degrees 48 minutes 58 seconds West (S 11°48'58" W), a distance of 270.91 feet; thence South 48 degrees 11 minutes 15 seconds East (S 48°11'15" E), a distance of 859.15 feet; thence South 41 degrees 40 minutes 17 seconds East (S 41°40'17" E), a distance of 148.14 feet; thence South 20 degrees 12 minutes 02 seconds East (S 20°12'02" E), a distance of 434.73 feet; thence South 31 degrees 42 minutes 25 seconds East (S 31°42'25" E), a distance of 203.83 feet; thence South 63 degrees 51 minutes 48 seconds East (S 63°51'48" E), a distance of 484.33 feet; thence South 86 degrees 31 minutes 14 seconds East (S 86°31'14" E), a distance of 158.42 feet; thence North 41 degrees 43 minutes 28 seconds East (N 41°43'28" E), a distance of 62.52 feet; thence South 89 degrees 56 minutes 00 seconds East (S 89°56'00" E), a distance of 767.57 feet; thence South 01 degrees 13 minutes 31 seconds East (S 01°13'31" E), a distance of 58.91 feet; thence South 89 degrees 34 minutes 20 seconds East (S 89°34'20" E), a distance of 1003.06 feet; thence North 09 degrees 38 minutes 43 seconds West (N 09°38'43" W), a distance of 249.49 feet; thence North 39 degrees 13 minutes 56 seconds West (N 39°13'56" W), a distance of 131.38 feet; thence North 59 degrees 12 minutes 29 seconds West (N 59°12'29" W), a distance of 125.97 feet; thence North 00 degrees 34 minutes 39 seconds East (N 00°34'39" E), a distance of 318.00 feet; thence North 09 degrees 38 minutes 07 seconds East (N 09°38'07" E), a distance of 551.22 feet; thence North 69 degrees 50 minutes 17 seconds East (N 69°50'17" E), a distance of 307.09 feet; thence South 56 degrees 47 minutes 45 seconds East (S 56°47'45" E), a distance of 612.77 feet; thence South 32 degrees 13 minutes 29 seconds West (S 32°13'29" W), a distance of 178.70 feet; thence South 56 degrees 44 minutes 51 seconds East (S 56°44'51" E), a distance of 66.38 feet; thence South 28 degrees 52 minutes 33 seconds West (S 28°52'33" W), a distance of 433.57 feet; thence South 68 degrees 32 minutes 14 seconds East (S 68°32'14" E), a distance of 737.09 feet; thence South 61 degrees 16 minutes 50 seconds East (S 61°16'50" E), a distance of 299.30 feet; thence North 31 degrees 46 minutes 50 seconds East (N 31°46'50" E), a distance of 101.53 feet; thence North 58 degrees 27 minutes 39 seconds West (N 58°27'39" W), a distance of 298.31 feet; thence North 01 degrees 32 minutes 36 seconds West (N 01°32'36" W), a distance of 218.60 feet; thence North 32 degrees 56 minutes 45 seconds East (N 32°56'45" E), a distance of 345.01 feet; thence North 56 degrees 22 minutes 59 seconds West (N 56°22'59" W), a distance of 698.15 feet; thence North 22 degrees 46 minutes 44 seconds West (N 22°46'44" W), a distance of 312.10 feet; thence North 33 degrees 18 minutes 45 seconds East (N 33°18'45" E), a distance of 296.66 feet; thence North 56 degrees 35 minutes 17 seconds West (N 56°35'17" W), a distance of 214.74 feet; thence South 32 degrees 28 minutes 42 seconds West (S 32°28'42" W), a distance of 631.90 feet; thence North 47 degrees 11 minutes 13 seconds West (N 47°11'13" W), a distance of 209.61 feet; thence North 42 degrees 34 minutes 43 seconds East (N 42°34'43" E), a distance of 544.55 feet; thence North 29 degrees 35 minutes 16 seconds West (N 29°35'16" W), a distance of 298.77 feet; thence North 34 degrees 27 minutes 49 seconds East (N 34°27'49" E), a distance of 271.33 feet; thence South 59 degrees 05 minutes 40 seconds East (S 59°05'40" E), a distance of 298.49 feet; thence North 32 degrees 06 minutes 52 seconds East

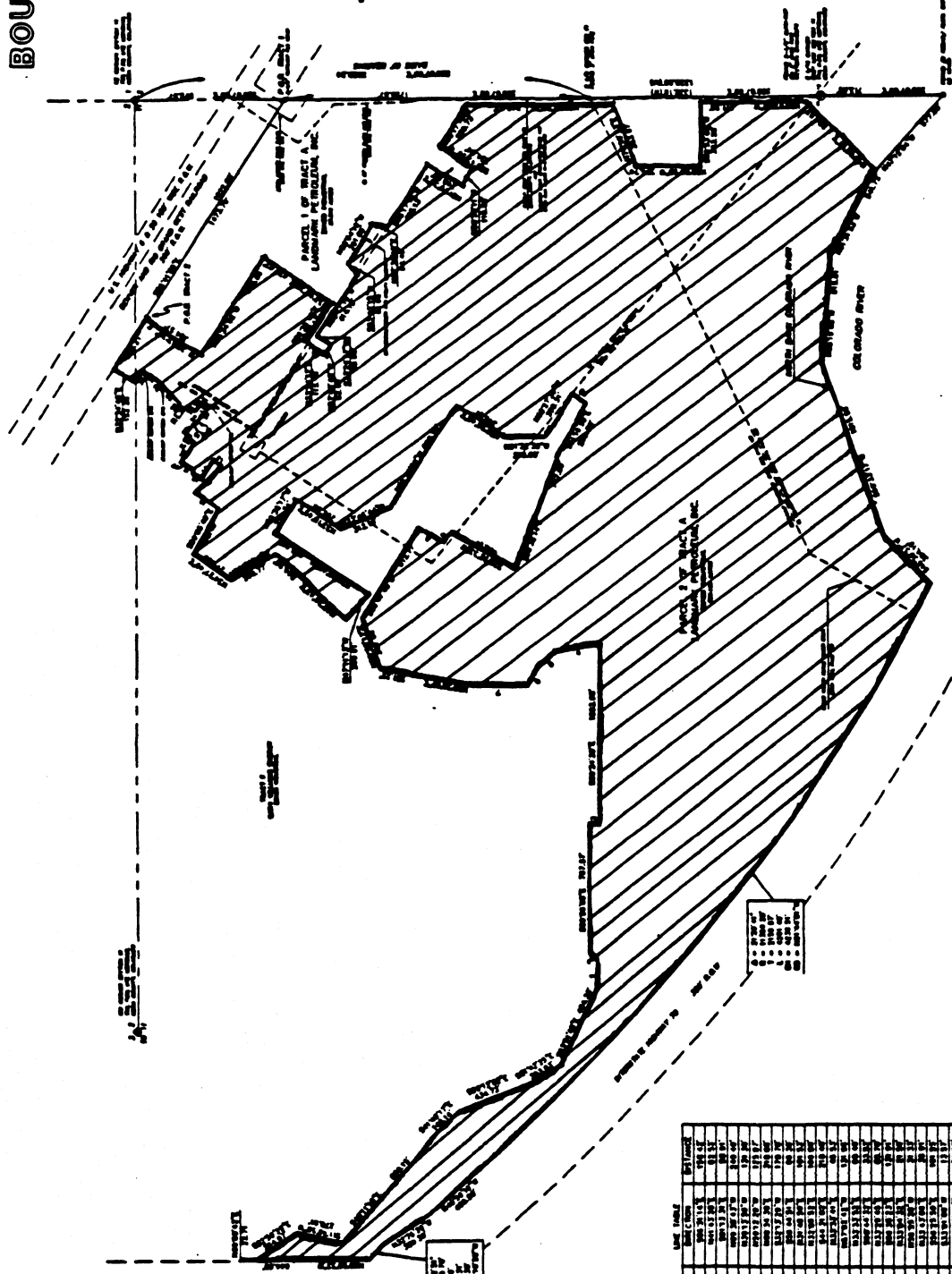
(N 32°06'52" E), a distance of 166.80 feet; thence South 44 degrees 31 minutes 02 seconds East (S 44°31'02" E), a distance of 218.40 feet; thence North 33 degrees 33 minutes 41 seconds East (N 33°33'41" E), a distance of 45.53 feet; thence North 57 degrees 02 minutes 42 seconds West (N 57°02'42" W), a distance of 131.96 feet; thence North 33 degrees 33 minutes 52 seconds East (N 33°33'52" E), a distance of 68.49 feet; thence South 60 degrees 44 minutes 32 seconds East (S 60°44'32" E), a distance of 33.52 feet; thence North 33 degrees 29 minutes 45 seconds East (N 33°29'45" E), a distance of 86.70 feet; thence South 56 degrees 35 minutes 23 seconds East (S 56°35'23" E), a distance of 131.91 feet; thence North 33 degrees 04 minutes 32 seconds East (N 33°04'32" E), a distance of 21.50 feet; thence North 56 degrees 55 minutes 28 seconds West (N 56°55'28" W), a distance of 31.33 feet; thence North 33 degrees 43 minutes 06 seconds East (N 33°43'06" E), a distance of 36.91 feet; thence South 56 degrees 25 minutes 59 seconds East (S 56°25'59" E), a distance of 101.55 feet; thence South 33 degrees 01 minutes 00 seconds West (S 33°01'00" W), a distance of 13.57 feet; thence South 57 degrees 02 minutes 09 seconds East (S 57°02'09" E), a distance of 34.90 feet; thence South 32 degrees 57 minutes 51 seconds West (S 32°57'51" W), a distance of 4.35 feet; thence South 56 degrees 29 minutes 07 seconds East (S 56°29'07" E), a distance of 111.95 feet; thence North 33 degrees 22 minutes 49 seconds East (N 33°22'49" E), a distance of 41.69 feet; thence North 56 degrees 58 minutes 03 seconds West (N 56°58'03" W), a distance of 65.92 feet; thence North 32 degrees 32 minutes 02 seconds East (N 32°32'02" E), a distance of 65.75 feet; thence North 56 degrees 58 minutes 09 seconds West (N 56°58'09" W), a distance of 89.51 feet; thence North 32 degrees 22 minutes 45 seconds East (N 32°22'45" E), a distance of 35.88 feet; thence South 57 degrees 07 minutes 02 seconds East (S 57°07'02" E), a distance of 76.98 feet; thence North 43 degrees 10 minutes 35 seconds East (N 43°10'35" E), a distance of 142.24 feet; thence North 55 degrees 25 minutes 58 seconds East (N 55°25'58" E), a distance of 33.39 feet; thence North 33 degrees 18 minutes 50 seconds East (N 33°18'50" E), a distance of 106.81 feet; thence North 56 degrees 36 minutes 08 seconds West (N 56°36'08" W), a distance of 88.73 feet; thence North 32 degrees 34 minutes 45 seconds East (N 32°34'45" E), a distance of 152.28 feet to the Southerly right-of-way line of the Denver and Rio Grand Railroad; thence South 56 degrees 41 minutes 00 seconds East (S 56°41'00" E), a distance of 348.21 feet to the TRUE POINT OF BEGINNING. Said parcel containing 280.186 acres as described.

Said parcel being subject to easements and right-of-ways of record as recorded in the Mesa County Clerk and Recorder's Office.

Prepared by: **Dennis W. Johnson, PLS**
Professional Surveying Services
PO Box 4506
Grand Junction, CO 81502
303-241-3841
Jan. 27, 1994

BOUNDARY ADJUSTMENT
OF PARCELS LOCATED IN
SECTIONS 2, 10, & 11
T1N, R3W, UTE MERIDIAN
MESA COUNTY, COLORADO

Parcel 2
(Retained Real
Property)



PRELIMINARY
FOR REVIEW ONLY

- MESA COUNTY ON THIS SURVEY BOUNDARY
- CALCULATED POSITION (NOT SET)
- SET 1 1/2" ALUMINUM CAP ON NO. 5 REBAR, PLS. HOLD
- RECORD OF SURVEY
- PLEASANT TOWNSHIP ADJACENT

Professional Surveyor
JAMES E. SMITH, JR., P.S.
201-341-3041
RECORD OF SURVEY
T1N, R3W, UTE MERIDIAN
MESA COUNTY, COLORADO
SAR BY: JPS
SECTION BY: JPS
DATE: 1/1/94

PARCEL 1 OF TRACT A (REVISED 1/27/94)

A parcel of land located in the SE1/4 of Section 2, and East 1/2 of Section 11, Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

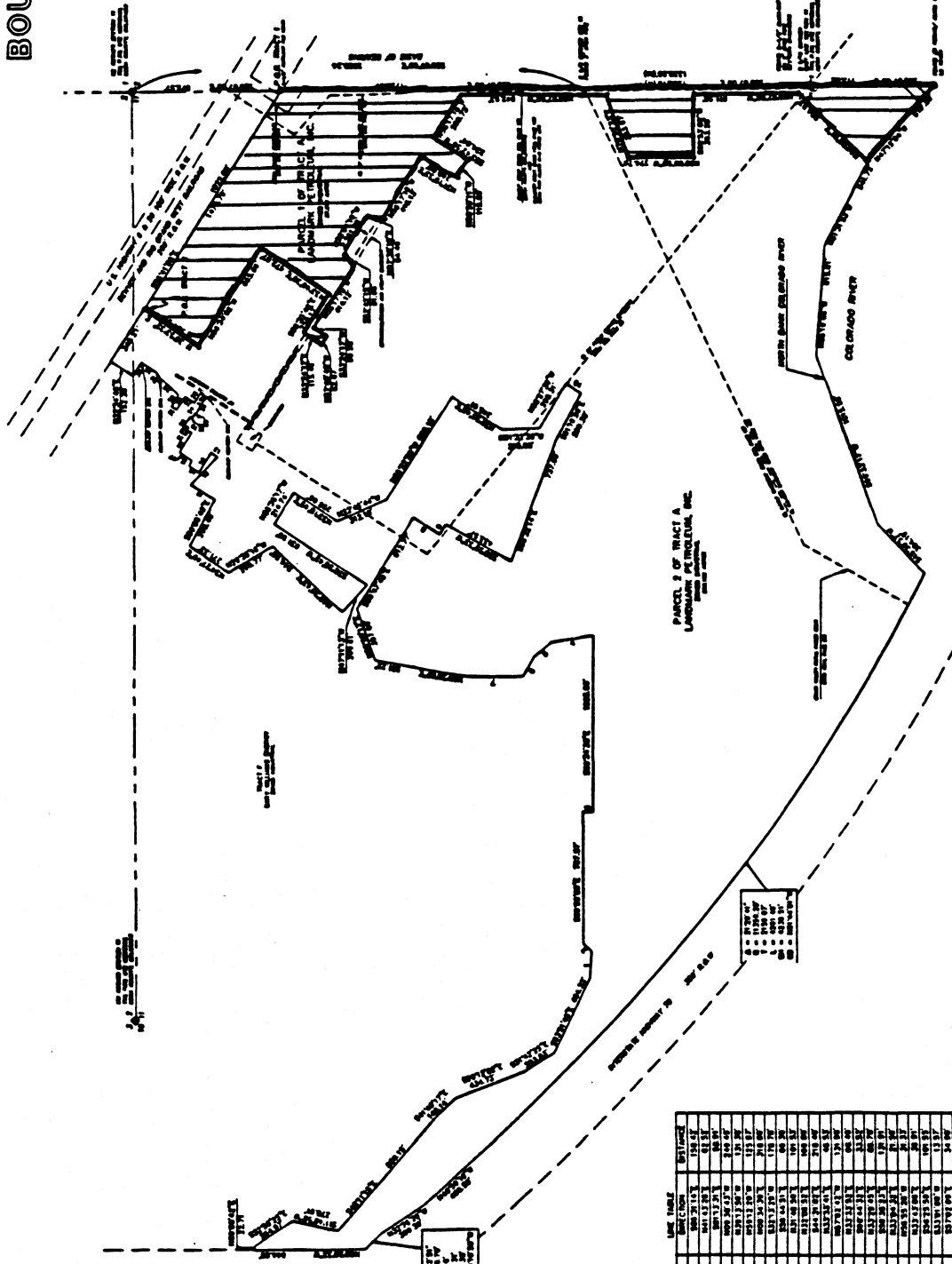
Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00" E a distance of 2629.24 feet for a basis of bearings, with all bearings contained herein relative thereto; thence S 00°07'00" E a distance of 872.57 feet along the East line of the Northeast quarter (NE1/4) of Section 11 to a point on the Southerly right-of-way line of the Denver and Rio Grand Railroad, and the TRUE POINT OF BEGINNING; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 1756.67 feet to the Northeast corner of the SE1/4 of Section 11 (E 1/4 corner); thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 1332.18 feet to the Northeast corner of the SE1/4 SE1/4 of Section 11; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 713.82 feet to a point on the North bank of the Colorado River; thence along said North bank North 47 degrees 12 minutes 04 seconds West (N 47°12'04" W), a distance of 577.89 feet; thence leaving said North bank North 44 degrees 02 minutes 01 seconds East (N 44°02'01" E), a distance of 564.53 feet; thence North 00 degrees 07 minutes 00 seconds West (N 00°07'00" W), a distance of 611.55 feet; thence South 89 degrees 53 minutes 00 seconds West (S 89°53'00" W), a distance of 363.28 feet; thence North 00 degrees 06 minutes 58 seconds West (N 00°06'58" W), a distance of 374.74 feet; thence North 70 degrees 59 minutes 23 seconds East (N 70°59'23" E), a distance of 383.96 feet; thence North 00 degrees 07 minutes 00 seconds West (N 00°07'00" W), a distance of 842.93 feet; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 289.73 feet; thence South 33 degrees 42 minutes 50 seconds West (S 33°42'50" W), a distance of 234.64 feet; thence North 58 degrees 50 minutes 11 seconds West (N 58°50'11" W), a distance of 115.86 feet; thence North 31 degrees 19 minutes 33 seconds East (N 31°19'33" E), a distance of 240.00 feet; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 418.13 feet; thence North 07 degrees 30 minutes 19 seconds East (N 07°30'19" E), a distance of 94.49 feet; thence North 58 degrees 04 minutes 10 seconds West (N 58°04'10" W), a distance of 261.08 feet; thence South 52 degrees 42 minutes 15 seconds West (S 52°42'15" W), a distance of 81.06 feet; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 414.12 feet; thence South 33 degrees 24 minutes 17 seconds West (S 33°24'17" W), a distance of 90.58 feet; thence North 57 degrees 40 minutes 48 seconds West (N 57°40'48" W), a distance of 52.07 feet; thence North 33 degrees 24 minutes 17 seconds East (N 33°24'17" E), a distance of 115.46 feet; thence South 56 degrees 35 minutes 40 seconds East (S 56°35'40" E), a distance of 258.17 feet; thence North 33 degrees 49 minutes 38 seconds East (N 33°49'38" E), a distance of 472.87 feet; thence North 56 degrees 34 minutes 02 seconds West (N 56°34'02" W), a distance of 665.06 feet; thence North 33 degrees 53 minutes 32 seconds East (N 33°53'32" E), a distance of 384.57 feet to a point on the Southerly right-of-way line of the Denver and Rio Grand Railroad; thence along said right-of-way South 56 degrees 41 minutes 00 seconds East (S 56°41'00" E), a distance of 1473.79 feet to the TRUE POINT OF BEGINNING. Said Parcel containing 37.816 acres as described.

Said parcel being subject to easements and right-of-ways of record as recorded in the Me
County Clerk and Recorder's Office.

Prepared by: Dennis W. Johnson, PLS
Professional Surveying Services
PO Box 4506
Grand Junction, CO 81502
303-241-3841
Jan. 27, 1994
9391A6.LGL

BOUNDARY ADJUSTMENT OF PARCELS LOCATED IN SECTIONS 2, 10, & 11 T1N, R3W, UTE MERIDIAN MESA COUNTY, COLORADO

Parcel 1
(Transferred Real
Property)



1/4 SECTION 10
1/4 SECTION 11
1/4 SECTION 12

LINE	FROM	TO	BEARING	DISTANCE
1	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
2	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
3	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
4	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
5	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
6	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
7	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
8	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
9	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
10	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
11	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
12	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
13	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
14	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
15	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
16	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
17	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
18	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
19	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
20	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
21	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
22	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
23	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
24	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
25	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
26	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
27	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12
28	1/4 SECTION 10	1/4 SECTION 11	N 89° 15' 00" E	124.12
29	1/4 SECTION 11	1/4 SECTION 12	N 89° 15' 00" E	124.12
30	1/4 SECTION 12	1/4 SECTION 10	N 89° 15' 00" E	124.12

- LEGEND
- MESA COUNTY OR BLS BUREAU ADJUSTMENT
 - CALCULATED POSITION (NOT SET)
 - SET 1/4" ALUMINUM CAP ON NO. 5 REBAR, PLS. 10000
 - SECOND MEASUREMENT
 - PRISM (INDICATED AS NOTED)

DATE OF SURVEY: 10/1/2011
BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

PRELIMINARY
FOR REVIEW ONLY

Prepared for: [Name]	Project: [Name]
By: [Name]	Date: [Date]
Checked by: [Name]	Date: [Date]
Approved by: [Name]	Date: [Date]

Schedule 4.5
to Asset Purchase Agreement

CONSENTS

1. Buyer will need to obtain any consents required from parties other than Chase and Landmark ("Third Parties") required for the assignment of the agreements described in Schedule 5 to be effective as to the Third Parties.
2. Buyer will need to obtain any consents required for the transfer to Buyer of any of the Permits.
3. In connection with any sale after Closing of any contract rights constituting Retained Assets, Buyer will need to comply with any consent requirements for the transfer of such contracts under their respective terms.

LEASED ASSETS

To the knowledge of Seller, the following constitutes all of the Leases with respect to Assets leased by Seller and the Assets subject thereto (but only to the extent that the same are still in effect):

1. Equipment Lease Agreement between Western Slope Refining Company ("Western") and First Interstate Leasing Company (formerly UCB Leasing Corp.) dated November 9, 1981, as amended, and assigned to Seller on November 6, 1990.

Leased Equipment

80,000 bbl. pitch tank
Computer monitored loading system
Boiler feedwater pumps
Emergency generator
Lisbon charge pump
Lab bottle washer
Diesel powered fire water pump
HP gas chromatograph

2. Equipment Lease Agreement between Western and Banc One Equipment Finance Inc. (formerly American Fletcher Leasing Corporation) dated June 22, 1983, as amended, and as assigned to Seller by letter agreement dated November 12, 1990, covering hydrocracker charge tank, vacuum charge tank, diesel tank and other tanks and associated facilities.

Leased Equipment

Diesel tank #20074
Shale Oil tank #55092
Reduced crude tank #40075
JP-4 tank #55088
JP-4 tank #55089
MTBE/Toluene tank #2050

3. GATX Leasing Corporation Equipment Lease with Western dated as of April 29, 1983, as assigned to Seller by letter agreement dated October 18, 1990, covering railcars.

Leased Equipment

Sour water stripper
Gas oil tank
Decant oil tank
Vacume Feed Slurry Tank #5086

4. Equipment Lease Agreements with Browning-Ferris Industries, Inc. and its affiliates covering cleaning equipment.
5. Railroad Equipment Lease with ITEL Rail Corporation.
6. Leases with Monex covering miscellaneous office equipment, furniture and computer software, etc.
7. Lease with Pitney Bowes covering office equipment.
8. Lease of Railroad Equipment between Western and Pullman Leasing Company dated July 19, 1989 covering railcars.

Schedule 4.9
to Asset Purchase Agreement

PERMITS

[ATTACHED]

ENVIRONMENTAL PERMITS

LANDMARK PETROLEUM, INC. Current Outstanding Permits


1992 Point Source Inven. #	Source Description	Permit #
6	TK-55088 Float Roof Tank	89ME401-2
8	TK-55089 Float Roof Tank	89ME401-1
10	Two Sorbent Silos	89ME319
14	Removed Clayton E-60 Stm. Gen.	91ME684
28	FL-4402 High Press. Flare	89ME277
35	F-4004 Steam Boiler #4	C12,958
39	F-3400 Platformer Furnace	83ME106
53	TK-40080	C-10,577
54	TK-40081	C-10,577
82	TK-55082	C-12,917
83	RR Coke Ldng Facil. & Bin Vent Filter	C-11,008
84	TK-80087	C-13,365-1
85	F-4401 Pitch Tank Heater	C-13,365-2
86	TK-30065	C-13,014
87	TK-20066	C-13,015
88	F-2501 Hydrogen Furnace	82ME360
89	TK-55090	83ME107-3
90	TK-5086	83ME107-2
91	TK-20074	83ME107-1
92	TK-20067	C-13,016
93	TK-55083 Heater #1	C-12,008-1
94	F-2201 Hydrocracking Furnace	82ME358-1
95	F-2202 Hydrocracking Furnace	82ME358-2
96	F-2204 HC Fractionator Reboiler	82ME358-3
97	F-2203 HC Stabilizer Reboiler	82ME358-4
98	SRU Tail Gas Incinerator	82ME359I
99	Claus Plt. (Same source as pt.98)	82ME359I
PEN/Pmt	TK-55083 Heater #2	C-12,008-2
PEN/Pmt	TK-55083 Heater #3	C-12,008-3
PEN/Pmt	TK-55084	C-12,917
PEN/Pmt	Gilsonite/Green Coke Unloading	C-12,725-1
PEN/Pmt	Gilsonite/Green Coke Storage	C-12,725-2
PEN/Pmt	Calcined Coke Handling/Storage	C-12,725-3
PEN/Pmt	K-4614 Baghouse (railcar loading)	C-12,725-4
PEN/Pmt	K-4615 Baghouse (railcar loading)	C-12,725-5
	NPDES Water Discharge Permit	CO-0000078
	Stormwater Permit	COR-020251
	(The above 2 permits will be combined in the NPDES discharge permit in the Fall of 1993.)	
	Radiation Source Control Permit	COLO 232-03

COLORADO CERTIFICATE OF BOILER
OR PRESSURE VESSEL INSPECTION

<u>Certificate No.</u>	<u>Vessel Mfg.</u>
238843	ABCO
238844	BAWI
238845	DETA
238846	DETA
238847	COEN
238848	NEBR
238849	BAWI
238850	HOFA
238851	MCGI
238852	KITE

FEB-16-1994 18:26 FROM LANDMARK PETROLEUM CO. TO

17132211212 P.04

STATE SERIAL NO. 19857
CERTIFICATE NO. 238843
DATE INSPECTED 09/07/1993
THIS CERTIFICATE EXPIRES 05/07/1994
VESSEL MANUFACTURER ABCO
MFR SERIAL/MS NUMBER NB2196

PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

THIS IS TO CERTIFY THAT THE
BOILER OR PRESSURE VESSEL
HEREIN DESCRIBED MAY BE
OPERATED FOR THE PERIOD AND
AT A PRESSURE NOT TO EXCEED
THAT SHOWN AND
ONLY AT THE LOCATION
SPECIFIED HEREON.

OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

COLORADO
BOILER INSPECTION BRANCH
1120 LINCOLN ST, SUITE 130
DENVER
CO 80203

* PAID *
09/27/1993
BOILER INSPECTION BRANCH
FEE: 23.00

INSPECTED BY

AUSTIN - COLC

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA


Post this certificate in the equipment room or, if portable, in metal container fastened to the vessel or in a label box near the vessel. (May be revoked for failure to keep the vessel in

safe condition.)

REMARKS:

WELDED REPAIRS TO STEEL BOILERS, WHEN REQUIRED, SHALL BE PERFORMED &
DOCUMENTED BY INDIVIDUALS/ORGANIZATIONS QUALIFIED TO CHAPTER III OF
THE CURRENT NAT'L BOARD INSPECTION CODE. QUESTIONS-(303) 894-7535.

B-1 R (10-91)

STATE SERIAL NO. 5333
CERTIFICATE NO. 238844
DATE INSPECTED 09/07/1993
THIS CERTIFICATE EXPIRES 05/07/1994
VESSEL MANUFACTURER BAWI
MFR SERIAL/MS NUMBER NB19516

PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

THIS IS TO CERTIFY THAT THE
BOILER OR PRESSURE VESSEL
HEREIN DESCRIBED MAY BE
OPERATED FOR THE PERIOD AND
AT A PRESSURE NOT TO EXCEED
THAT SHOWN AND
ONLY AT THE LOCATION
SPECIFIED HEREON.

OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

COLORADO
BOILER INSPECTION BRANCH
1120 LINCOLN ST, SUITE 130
DENVER
CO 80203

* PAID *
09/27/1993
BOILER INSPECTION BRANCH
FEE: 23.00

INSPECTED BY

AUSTIN - COLC

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC.
1493 HWY 6 E 50
FRUITA

Post this certificate in the equipment room or, if portable, in metal container fastened to the vessel or in a label box near the vessel. (May be revoked for failure to keep the vessel in

safe condition.)

REMARKS:

WELDED REPAIRS TO STEEL BOILERS, WHEN REQUIRED, SHALL BE PERFORMED &
DOCUMENTED BY INDIVIDUALS/ORGANIZATIONS QUALIFIED TO CHAPTER III OF
THE CURRENT NAT'L BOARD INSPECTION CODE. QUESTIONS-(303) 894-7535.

FEB-16-1994 18:27 FROM LANDMARK PETROLEUM CO.

TO

17132211212 P.05

COLORADO

STATE SERIAL NO.
39442

CERTIFICATE NO.

238845

DATE INSPECTED

09/07/1993

THIS CERTIFICATE EXPIRES

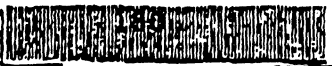
05/07/1994

VESSEL MANUFACTURER

DETA

MFR SERIAL/NO NUMBER

NB219



PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

THIS IS TO CERTIFY THAT THE
BOILER OR PRESSURE VESSEL
HEREIN DESCRIBED MAY BE
OPERATED FOR THE PERIOD AND
AT A PRESSURE NOT TO EXCEED
THAT SHOWN AND
ONLY AT THE LOCATION
SPECIFIED HEREON.

OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

BOILER INSPECTION BRANCH
1120 LINCOLN ST, SUITE 1305
DENVER
CO 80203

* PAID *

09/27/1993

BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- COLD

LOCATION OF BOILER OR PRESSURE VESSEL

WESTERN SLOPE REFINING
1493 HWY 6 E 50
FRUITA

Post this certificate in the equipment room or, if portable, in metal container fastened to the vessel or in a tool box near the vessel. (May be revoked for failure to keep the vessel in safe condition.)

REMARKS:

WELDED REPAIRS TO STEEL BOILERS, WHEN REQUIRED, SHALL BE PERFORMED & DOCUMENTED BY INDIVIDUALS/ORGANIZATIONS QUALIFIED TO CHAPTER III OF THE CURRENT NAT'L BOARD INSPECTION CODE. QUESTIONS-(303) 894-7535.

BP-1 R(10-91).

STATE SERIAL NO.
39443

CERTIFICATE NO.

238846

DATE INSPECTED

09/07/1993

THIS CERTIFICATE EXPIRES

05/07/1994

VESSEL MANUFACTURER

DETA

MFR SERIAL/NO NUMBER

NB219



PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

THIS IS TO CERTIFY THAT THE
BOILER OR PRESSURE VESSEL
HEREIN DESCRIBED MAY BE
OPERATED FOR THE PERIOD AND
AT A PRESSURE NOT TO EXCEED
THAT SHOWN AND
ONLY AT THE LOCATION
SPECIFIED HEREON.

OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

COLORADO
BOILER INSPECTION BRANCH
1120 LINCOLN ST, SUITE 1305
DENVER
CO 80203

* PAID *

09/27/1993

BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- COLD

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA

Post this certificate in the equipment room or, if portable, in metal container fastened to the vessel or in a tool box near the vessel. (May be revoked for failure to keep the vessel in safe condition.)

REMARKS:

WELDED REPAIRS TO STEEL BOILERS, WHEN REQUIRED, SHALL BE PERFORMED & DOCUMENTED BY INDIVIDUALS/ORGANIZATIONS QUALIFIED TO CHAPTER III OF THE CURRENT NAT'L BOARD INSPECTION CODE. QUESTIONS-(303) 894-7535.

FEB-16-1994 18:29

FROM LANDMARK PETROLEUM CO.

TO

17132211212 P.08

COLORADO

STATE SERIAL NO.
5623

CERTIFICATE NO.

238847

DATE INSPECTED

09/07/1993

THIS CERTIFICATE EXPIRES

05/07/1994

VESSEL MANUFACTURER
COEN

MFR SERIAL/NB NUMBER

6192

PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTIONTHIS IS TO CERTIFY THAT THE
BOILER OR PRESSURE VESSEL
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AT A PRESSURE NOT TO EXCEEDTHAT SHOWN AND
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SPECIFIED HEREON.

OWNER/USER

LANDMARK PETROLEUM, INC**
1493 HWY 6 E 50
FRUITA CO 81521

BOILER INSPECTION BRANCH

1120 LINCOLN ST, SUITE 130
DENVER
CO 80203

* PAID *

09/27/1993

BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- COLO

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA*** THIS CERTIFICATE
WILL BE VALID ONLY
WHEN ALL REQUIREMENTS
ARE IN COMPLIANCE ***

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THE CURRENT NAT'L BOARD INSPECTION CODE. QUESTIONS-(303) 894-7535.

B-1 R (10-91)

STATE SERIAL NO.
40088

CERTIFICATE NO.

238848

DATE INSPECTED

09/07/1993

THIS CERTIFICATE EXPIRES

05/07/1994

VESSEL MANUFACTURER
NEBR

MFR SERIAL/NB NUMBER

NB1849

PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTIONTHIS IS TO CERTIFY THAT THE
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OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

COLORADO

BOILER INSPECTION BRANCH

1120 LINCOLN ST, SUITE 130
DENVER
CO 80203

* PAID *

09/27/1993

BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- COLO

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA

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THE CURRENT NAT'L BOARD INSPECTION CODE. QUESTIONS-(303) 894-7535.

TOTAL P.08

FEB-16-1994 18:28 FROM LANDMARK PETROLEUM CO.

TO

17132211212 P.07

COLORADO

STATE SERIAL NO.
5332

CERTIFICATE NO.

238849

DATE INSPECTED

09/07/1993

THIS CERTIFICATE EXPIRES

05/07/1994

VESSEL MANUFACTURER

BAWI

MFR SERIAL/NO NUMBER

N819515



PRESSURE ALLOWED (LBS) P&I

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

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SPECIFIED HEREON.

OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

BOILER INSPECTION BRANCH
1120 LINCOLN ST. SUITE 130
DENVER
CO 80203

* PAID *

09/27/1993

BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- COLO

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA

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8-1 R(10-93)

STATE SERIAL NO.
19810

CERTIFICATE NO.

238850

DATE INSPECTED

09/07/1993

THIS CERTIFICATE EXPIRES

05/07/1994

VESSEL MANUFACTURER

HOFA

MFR SERIAL/NO NUMBER

N8343



PRESSURE ALLOWED (LBS) P&I

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

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OWNER/USER

LANDMARK PETROLEUM INC***
1493 HWY 6 E 50
FRUITA CO 81521

COLORADO
BOILER INSPECTION BRANCH
1120 LINCOLN ST, SUITE 130
DENVER
CO 30203

* PAID *

09/27/1993

BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- COLO

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC.
1493 HWY 6 E 50
FRUITA


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FEB-16-1994 18:27 FROM LANDMARK PETROLEUM CO. TO

17132211212 P.06
COLORADO

STATE SERIAL NO. 45375
CERTIFICATE NO. 238851
DATE INSPECTED 09/07/1993
THIS CERTIFICATE EXPIRES 09/07/1994
VESSEL MANUFACTURER HCGI
MFR SERIAL/NO NUMBER 7391

PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

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OWNER/USER

LANDMARK PETROLEUM INC

1493 HWY. 6 E 50
FRUITA CO 81521

BOILER INSPECTION BRANCH

1120 LINCOLN ST, SUITE 130
DENVER
CO 80203* PAID *
09/27/1993
BOILER INSPECTION BRANCH

FEE: 23.00

INSPECTED BY

AUSTIN

- CCLC

LOCATION OF BOILER OR PRESSURE VESSEL


LANDMARK PETROLEUM
1493 HWY 6 E 50
FRUITA

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B-1 R(1001)

STATE SERIAL NO. 19813
CERTIFICATE NO. 238852
DATE INSPECTED 09/02/1993
THIS CERTIFICATE EXPIRES 05/07/1994
VESSEL MANUFACTURER KITE
MFR SERIAL/NO NUMBER N87

PRESSURE ALLOWED (LBS) P.S.I.

CERTIFICATE OF
BOILER or
PRESSURE VESSEL INSPECTION

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OWNER/USER

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA CO 81521

COLORADO

BOILER INSPECTION BRANCH

1120 LINCOLN ST, SUITE 130
DENVER
CO 80203* PAID *
09/27/1993
BOILER INSPECTION BRANCH
FEE: 23.00

INSPECTED BY

AUSTIN

- CCLC

LOCATION OF BOILER OR PRESSURE VESSEL

LANDMARK PETROLEUM, INC
1493 HWY 6 E 50
FRUITA*** THIS CERTIFICATE
WILL BE VALID ONLY
WHEN ALL REQUIREMENTS
ARE IN COMPLIANCE ***

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Schedule 4.10
to Asset Purchase Agreement

INSURANCE POLICIES

[ATTACHED]

DATE	March 8, 1993	Alexander & Alexander	Contacts:	Thad Call
INSURED	Landmark Petroleum Inc.	Office at	Phone:	303/858-9811
	1493 Highway 6 & 50	Denver	Account Manager:	Shelley Urwiller
	Fruita, CO 81521	SCHEDULE OF INSURANCE	Account Executive:	Bobbie Fitzgerald
			Phone:	303/297-4682, 297-4688

Type of Policy/Plan	Term	Premium	Average Annual Cost	Expiration	Policy No.	Company
PROPERTY	3 Year	\$305,950		11/06/94	SPFDN9332649	Hartford Steam Boiler

Limit of Liability: \$50,000,000

Sublimits:

\$ 10,000,000 Earthquake - Aggregate
10,000,000 Flood - Aggregate
Included Business Interruption
250,000 Transit
100,000 EDP Media - Extra Expense

Deductibles:

\$500,000 Property Damage - per occurrence
15 Day Business Interruption - per occurrence

LIABILITY	1 Year	\$36,487	11/06/93	GL5439351	National Union
------------------	---------------	-----------------	-----------------	------------------	-----------------------

\$2,000,000 General Aggregate
1,000,000 Products/Completed Operations Aggregate Limit
1,000,000 Personal and Advertising Injury Limit
1,000,000 Each Occurrence Limit
50,000 Fire Damage Limit (any one fire)
5,000 Medical Expense Limit (any one person)

THIS SCHEDULE DOES NOT TAKE THE PLACE OF OR ALTER ANY OF THE CONDITIONS, EXCLUSIONS OR OTHER TERMS OF THE INSURANCE POLICIES LISTED; IT IS MERELY A SHORT DESCRIPTIVE GUIDE TO THE POLICIES IN FORCE, FOR CONVENIENT REFERENCE. THE POLICIES THEMSELVES SHOULD BE REVIEWED CAREFULLY, AND QUESTIONS ON COVERAGE, CLAIMS AND ALL OTHER INSURANCE MATTERS SHOULD BE REFERRED TO YOUR A&A CONTACTS.

DATE **March 8, 1993**
 INSURED **Landmark Petroleum Inc.**
1493 Highway 6 & 50
Fruita, CO 81521

Alexander & Alexander

Office at **Denver**

SCHEDULE OF INSURANCE

Contacts: **Thad Call**
 Phone: **303/858-9811**
 Account Manager: **Shelley Urwiller**
 Account Executive: **Bobbie Fitzgerald**
 Phone: **303/297-4682, 297-4688**

Type of Policy/Plan	Term	Premium	Average Annual Cost	Expiration	Policy No.	Company
AUTOMOBILE	1 Year	\$2,076		11/06/93	34UENEQ5829	Hartford Ins. Co.
\$1,000,000 Liability Basic Personal Injury Protection 1,000 Medical Payments 1,000,000 Uninsured Motorist 1,000,000 Hired and Non-Owned Liability 1984 Ford Pickup, #1347 1989 Ford Pickup, #0692 1989 Ford Pickup, #9648 1989 Ford, #K1G1						
UMBRELLA	1 Year	\$40,000		11/06/93	ZU0000160	Pacific Ins. Co.
\$10,000,000 Excess Over Primary 25,000 Self-Insured Retention						

THIS SCHEDULE DOES NOT TAKE THE PLACE OF OR ALTER ANY OF THE CONDITIONS, EXCLUSIONS OR OTHER TERMS OF THE INSURANCE POLICIES LISTED; IT IS MERELY A SHORT DESCRIPTIVE GUIDE TO THE POLICIES IN FORCE, FOR CONVENIENT REFERENCE. THE POLICIES THEMSELVES SHOULD BE REVIEWED CAREFULLY, AND QUESTIONS ON COVERAGE, CLAIMS AND ALL OTHER INSURANCE MATTERS SHOULD BE REFERRED TO YOUR A&A CONTACTS.



Alexander & Alexander Inc.
Denver Place-Plaza Tower
1099 Eighteenth Street, Suite 3000
Denver, Colorado 80202-1930
Telephone 303 297-3020
Fax 303 297-4675

June 17, 1993

Mr. Thad Call
General Manager - Administration
Landmark Petroleum
1493 Highway 6 & 50
Fruita, CO 81521

Re: Directors & Officers Liability
#4369218

Dear Thad:

Enclosed are endorsements 17 - 21. The are as follows.

- Endorsement 17 - Changes the your location to Utah
- Endorsement 18 - Extends the policy to April 15, 1994
- Endorsement 19 - Deletes the Texas Amendatories
- Endorsement 20 - Adds the Utah Cancellation Amendatory
- Endorsement 21 - Changes the Broker of Record to A&A

Please attach these endorsements to the current Directors & Officers Liability insurance policy. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Shelley Urwiller".

Shelley Urwiller
Account Manager

/su

Enclosure

ENDORSEMENT # 18

This endorsement, effective 12:01 A.M., April 15, 1993,
forms a part of policy number 436 92 18
issued to LANDMARK PETROLEUM

By: National Union Fire Insurance Company of Pittsburgh, Pa.

In consideration of the premium charged it is hereby
understood and agreed that Item 3 of the
Policy Declarations, POLICY PERIOD:, is amended to read as follows:

From: January 15, 1991 To: April 15, 1994.

It is further understood and agreed that for purposes of
determining the Policy Period herein, the annual aggregate
Limit of Liability is amended to be inclusive of and
apply to the following:

From: January 15, 1991 To: April 15, 1994.


Authorized Representative

Vice-President - National Union

ENDORSEMENT# 20

This endorsement, effective *12:01 AM*, April 15, 1993 forms a part of
policy number 436-92-18
issued to LANDMARK PETROLEUM

by *National Union Fire Insurance Company of Pittsburgh, Pa.*

UTAH
CANCELLATION/NONRENEWAL ENDORSEMENT

Wherever used in this endorsement: 1) "we", "us", "our", and "Insurer" mean the insurance company which issued this policy; and 2) "you", "your", "named Insured", "First Named Insured", and "Insured" mean the Named Corporation, Named Organization, Named Sponsor, Named Insured, or Insured stated in the declarations page; and 3) "Other Insured(s)" means all other persons or entities afforded coverage under the policy.

It is hereby agreed that this insurance policy, if in effect for 60 days or more, may not be cancelled by the Insurer except for failure to pay a premium when due or for one of the following reasons:

1. Material misrepresentation;
2. Substantial breaches of contractual duties, conditions or warranties;
3. Attainment of the age specified as the terminal age for coverage (notice is necessary, see Notice Section below);
4. With automobile insurance revocation or suspension of the driver's license of the named Insured or any other person who customarily drives the car;
5. Substantial change in the risk assumed, unless the Insurer should reasonably have foreseen the change or contemplated the risk when entering into the contract.

Insurance policies in effect for less than 60 days may be cancelled for any reason.

NOTICE OF CANCELLATION/NONRENEWAL

- A. Cancellation, except for nonpayment of premium, is effective 30 days after the delivery or first class mailing of a written notice to the policyholder.
- B. Cancellation for nonpayment of premium is effective 10 days after delivery or first class mailing of the notice. This notice shall include a statement of the reason for cancellation.
- C. The above sections do not apply to any insurance contract that has not been previously renewed if the contract has been in effect less than sixty (60) days when the notice of cancellation is mailed or delivered. Cancellation in this circumstance is effective at least ten (10) days after delivery to the Insured of a written notice. If notice is sent by first class mail, postage prepaid, to the Insured at his last known address, delivery is considered accomplished after the passing of the statutory mailing time.



AUTHORIZED REPRESENTATIVE
Vice-President - National Union


ENDORSEMENT #21

**This endorsement, effective 12:01 A.M., January 15, 1993
forms a part of policy number 436 92 18
issued to LANDMARK PETROLEUM, INC.
by National Union Fire Insurance Company of Pittsburgh, Pa.**

**In consideration of the premium charged, it is hereby
understood and agreed, that the Broker of Record as set
forth in the Declarations, is amended to read as follows:**

**Alexander & Alexander, Inc.
Denver Place - Plaza Tower
1099 18th Street, Ste. 3000
Denver, CO 80202-1930**

All other terms and conditions remain the same


AUTHORIZED REPRESENTATIVE
Vice-President - National Union

Schedule 5
to Asset Purchase Agreement

CONTRACTS TO BE ASSIGNED

1. Purchase Agreement (GWEC) dated as of June 3, 1992 between Seller, Gary-Williams Energy Corporation ("GWEC") and Chase, and all agreements and other instruments executed by Seller, GWEC and/or Chase in connection therewith or pursuant thereto as and to the extent of any rights against GWEC thereunder in respect of the Transferred Assets. Notwithstanding the foregoing, no part of the Chase Liens will be assigned to Wescourt in connection with the transactions contemplated hereby.
2. Special Tax Indemnity Agreement dated as of [June 3, 1992] by GWEC in favor of Seller and Chase, relating to the Purchase Agreement (GWEC) set forth in No. 2 above, as and to the extent it relates to the Transferred Assets.
3. Mutual Access Easement and Use Agreement between Western and Seller dated November 5, 1990 as and to the extent it relates to the Transferred Assets.
4. Equipment Lease Agreement between Western Slope Refining Company ("Western") and First Interstate Leasing Company (formerly UCB Leasing Corp.) dated November 9, 1981, as amended, and assigned to Seller on November 6, 1990, solely as the same relates to the following equipment:
 - (a) Computer monitored loading system
 - (b) Lab bottle washer
 - (c) HP gas chromatograph

Schedule 6
to Asset Purchase Agreement

CONTRACTS TO BE TERMINATED

1. Consultation and Services Agreement dated as of June 19, 1992 between Seller, Flying J Inc. and Big West Oil Company ("BWOC").
2. Option Agreement (CPI) dated as of June 24, 1992 between Seller and Colorado Processing, Inc.
3. Option Agreement (Chase) dated as of June 24, 1992 between BWOC and Chase.

Tab D

Exhibit B
to Purchase Agreement

CONSENT AND AGREEMENT

THIS CONSENT AND AGREEMENT (this "Consent") is made as of February 28, 1994, by THE CHASE MANHATTAN BANK, N.A., a national banking association ("Chase").

RECITALS

A. Landmark Petroleum, Inc., a Delaware Corporation ("Seller"), owns an oil refinery located at 1493 Highway 6 & 50, Fruita, Colorado, and comprised of certain real property, fixtures, personal property and other assets (collectively, the "Assets").

B. The Assets are subject to certain liens and security interests in favor of Chase (the "Chase Liens") securing the obligations of Seller under the Amended and Restated Credit Agreement dated as of June 24, 1992, as amended from time to time prior to the date hereof, between Seller and Chase.

C. The Assets are also subject to a tax lien in favor of the tax authorities of the County of Mesa, Colorado (the "Tax Lien") securing the obligation of Seller to pay past due property taxes on the Assets in an aggregate amount of \$1,024,000.

D. Seller wishes to sell to Wescourt Group, Inc., a Delaware corporation ("Buyer"), a portion of the Assets comprised of the Transferred Assets, as defined in and pursuant to the terms of, an Asset Purchase Agreement dated as of the date hereof between Seller and Buyer (the "Purchase Agreement").

E. Seller also wishes to appoint Buyer's affiliate, Fruita Marketing & Management, Inc., a Delaware corporation ("Wescourt"), as Seller's exclusive representative for the marketing and sale to third parties of all Assets other than the Transferred Assets (such other Assets, the "Retained Assets") pursuant to the terms of a Marketing Agreement dated as of the date hereof between Seller, Buyer and Chase (the "Marketing Agreement").

CONSENT AND AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, Chase hereby agrees as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined have the meanings specified in Schedule 1 to the Purchase Agreement.

2. Consent to Transfer.

(a) Acknowledgement. Chase hereby acknowledges notice of the proposed sale to Buyer of the Transferred Assets and its receipt and review of a copy of the Purchase Agreement.

(b) Consent. Chase hereby consents to all of the terms of the Purchase Agreement, including, without limitation, the sale by Seller to Buyer of all of Seller's right, title and interest in and to the Transferred Assets, subject to the following limitations;

(i) If the Retained Assets remain subject to the Tax Lien on the Closing Date, then Chase's consent hereunder is conditioned upon the Transferred Assets remaining subject to the Chase Liens following such transfer until the occurrence of an event specified in Section 4 below; and

(ii) If the Tax Lien is released as to the Retained Assets on or prior to the Closing Date, Chase agrees that the Chase Liens shall automatically, and without any further action by Chase, be released as to the Transferred Assets and that, at Closing, Buyer shall take title to the Transferred Assets free and clear thereof. In such event, Chase further agrees promptly, and in any event within 20 days, to execute and deliver to Buyer such documents as Buyer may reasonably request and Chase may reasonably approve in order to evidence such release.

(c) Acknowledgment of Termination of Certain Agreements. Chase hereby acknowledges notice of and consents to the termination of certain documents in accordance with the terms of and as set forth in the Purchase Agreement.

3. Enforcement; Limited Recourse.

(a) Enforcement. Until the earlier to occur of (i) the second (2nd) anniversary of this Consent, (ii) the entry of a final, non-appealable judgment or order in a judicial or non-judicial proceeding enforcing the rights of the taxing authorities under the Tax Lien and proposing to divest Seller or Buyer, as the case may be, of possession of any Asset, and (iii) termination of the Marketing Agreement as a result of a default by Wescourt in

the performance of any of its material obligations thereunder or Westcourt's election to terminate the Marketing Agreement, Chase agrees that it shall not commence or maintain any Enforcement (as defined in the Marketing Agreement) upon or against any of the Transferred Assets, including, without limitation, any attachment, levy, distraint, or foreclosure proceeding.

(b) Limited Recourse. If Chase commences or maintains any Enforcement upon or against the Transferred Assets, Chase agrees that its recovery thereunder shall be limited to an amount equal to the lesser of (i) amount required to satisfy the Tax Lien on the Retained Assets at the time of the Enforcement and (ii) \$5,250,000 minus the aggregate Net Proceeds (as defined in the Marketing Agreement) received by Chase under the Marketing Agreement (such lesser amount, the "Lien Satisfaction Amount"). Notwithstanding anything to the contrary contained herein, Chase agrees to look to the Transferred Assets for payment and performance of the Chase Claim (as defined in the Marketing Agreement) solely to the extent of the Lien Satisfaction Amount and not to assert or attempt to assert any additional liability for payment or performance of Seller's obligations to Chase in excess of the Lien Satisfaction Amount against Buyer or its assets, including the Transferred Assets.

(c) Proceeds in Trust. If, notwithstanding the foregoing, Chase shall receive, or be entitled to receive, proceeds from any Enforcement with respect to the Transferred Assets in excess of the Lien Satisfaction Amount, such excess amount shall be held by Chase in trust for the benefit of Buyer and shall be promptly paid over and delivered to Buyer on demand. Seller agrees that, the obligations of Seller with respect to the Chase Claim shall be reinstated and revived to the extent of any amounts paid over and delivered to Buyer by Chase pursuant to the preceding sentence.

4. Agreement to Release Lien Upon the Occurrence of Certain Events. Chase hereby agrees that the Chase Liens shall automatically, and without any further action by Chase, be released as to the Transferred Assets upon the earliest to occur of (i) the date on which Westcourt shall have deposited aggregate Net Proceeds (as defined in the Marketing Agreement) available for application to the Chase Claim of \$5,250,000, or (ii) the date on which the Tax Lien is released as to all of the Retained Assets. Chase agrees promptly, and in any event within 20 days, to execute and deliver to Buyer such documents as Buyer may reasonably request and Chase may reasonably approve in order to evidence any such release.

5. Settlement of Tax Lien. Chase hereby acknowledges and confirms Buyer's right under the Marketing Agreement to negotiate concerning the payment, discharge, settlement, compromise, or adjustment of the taxes giving rise to the Tax Lien and the release of the Tax Lien from all or any portion of the Refinery Assets; provided, that, in each case, any payment, discharge, settlement, compromise, or adjustment thereof shall be at the sole cost and expense of Buyer and its Affiliates and shall not be a Sales Expense that may be reimbursed out of the proceeds of Sales (as each of the foregoing terms is defined in the Marketing Agreement).

6. Representations and Warranties. Chase hereby represents and warrants to Buyer and Seller that:

(a) Power and Authority. Chase has full corporate power and corporate authority to enter into this Consent and to perform its obligations hereunder;

(b) Due Authorization. The execution, delivery and performance by Chase of this Consent have been duly authorized by all necessary corporate action;

(c) Binding Effect. This Consent constitutes a valid and binding obligation of Chase, enforceable against Chase in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally or by general equitable principles; and

(d) No Consent. No consent, approval, authorization, registration or qualification of or by any person is required in connection with the execution, delivery and performance of this Consent or the performance by Chase of its obligations hereunder.

7. Communications. All notices, requests, demands and other communications under this Consent shall be in writing and shall be deemed to have been given (a) when delivered personally, or (b) 48 hours after being sent by facsimile with duplicate sent by courier service. Such communications shall be directed to Chase at the address for communications with Chase set forth in the Marketing Agreement.

8. Governing Law. This Consent will be governed by, and construed and enforced in accordance with, the laws of the State of New York.

9. Severability. Any provision of this Consent which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Consent or affecting the validity or enforceability of any such provision in any other jurisdiction, unless such prohibition or unenforceability frustrates the overall objective of this Consent.

IN WITNESS WHEREOF, Chase has duly executed this Consent and Agreement as of the date first written above.

THE CHASE MANHATTAN BANK, N.A.

By: _____
Title: _____

WESCOURT GROUP, INC. EXECUTES BELOW TO ACKNOWLEDGE ITS CONSENT TO THE FOREGOING AND TO AGREE TO THE SPECIFIC TERMS THEREOF APPLICABLE TO IT:

WESCOURT GROUP, INC.,
a Delaware corporation

By: _____
Title: _____

LANDMARK PETROLEUM, INC. EXECUTES BELOW TO ACKNOWLEDGE ITS CONSENT TO THE FOREGOING AND TO AGREE TO THE TERMS OF SECTION 3(C):

LANDMARK PETROLEUM, INC.
a Delaware corporation

By: _____
Richard Means, Vice President

SPECIAL WARRANTY DEED

LANDMARK PETROLEUM, INC., a Delaware Corporation (Grantor), whose address is 1493 Highway 6 & 50, Fruita, Colorado 81521, for the consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, hereby sells and conveys to FRUITA RP HOLDING, INC., a Delaware corporation (Grantee), whose legal address is 6500 Stapleton Drive South, Suite F204, Denver, Colorado 80216, County of Denver and State of Colorado, the following real property in the County of Mesa and State of Colorado, to-wit:

That certain real property described upon Exhibit A, attached hereto and incorporated herein by this reference; and,

Those certain easements which are described upon Exhibit B, attached hereto and incorporated herein by this reference, which are appurtenant to the property described in Exhibit A and are for the benefit of Grantee, its successors and assigns, provided with respect to such easements Grantor shall retain for itself and its successors and assigns the right to pave over and access over, along and across said easements to the extent such use does not unreasonably interfere with the use of such easements by Grantee,

also known as street and number 1493 Highway 6 & 50, Fruita, Colorado 81521, with all its appurtenances and warrants the title against all persons claiming under it.

This Special Warranty Deed is made and accepted subject to any and all restrictions, easements, reservations (including but not limited to all reservations of oil, gas and minerals) and/or encumbrances, if any, relating to the property conveyed hereby, to the extent, and only to the extent, that the same may still be in force and effect, and shown of record in the appropriate real property records of Mesa County, Colorado.

Signed and delivered this _____ day of February, 1994.

GRANTOR:

LANDMARK PETROLEUM, INC., a
Delaware corporation

By _____

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day of February, 1994, by _____, the _____ of Landmark Petroleum, Inc., a Delaware corporation.

My commission expires: _____

(SEAL)

Notary Public

Name and Address of Person Creating Newly Created Legal Description (38-35-106.5 C.R.S.): Dennis W. Johnson, PLS, Professional Surveying Services, P.O. Box 4506, Grand Junction, CO 81502.

PARCEL 1 OF TRACT A

A parcel of land located in the SE1/4 of Section 2, and East 1/2 of Section 11, Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00" E a distance of 2629.24 feet for a basis of bearings, with all bearings contained herein relative thereto; thence S 00°07'00" E a distance of 872.57 feet along the East line of the Northeast quarter (NE1/4) of Section 11 to a point on the Southerly right-of-way line of the Denver and Rio Grand Railroad, and the TRUE POINT OF BEGINNING; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 1756.67 feet to the Northeast corner of the SE1/4 of Section 11 (E 1/4 corner); thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 1332.18 feet to the Northeast corner of the SE1/4 SE1/4 of Section 11; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 713.82 feet to a point on the North bank of the Colorado River; thence along said North bank North 47 degrees 12 minutes 04 seconds West (N 47°12'04" W), a distance of 577.89 feet; thence leaving said North bank North 44 degrees 02 minutes 01 seconds East (N 44°02'01" E), a distance of 564.53 feet; thence North 00 degrees 07 minutes 00 seconds West (N 00°07'00" W), a distance of 611.55 feet; thence South 89 degrees 53 minutes 00 seconds West (S 89°53'00" W), a distance of 363.28 feet; thence North 00 degrees 06 minutes 58 seconds West (N 00°06'58" W), a distance of 374.74 feet; thence North 70 degrees 59 minutes 23 seconds East (N 70°59'23" E), a distance of 383.96 feet; thence North 00 degrees 07 minutes 00 seconds West (N 00°07'00" W), a distance of 842.93 feet; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 289.73 feet; thence South 33 degrees 42 minutes 50 seconds West (S 33°42'50" W), a distance of 234.64 feet; thence North 58 degrees 50 minutes 11 seconds West (N 58°50'11" W), a distance of 115.86 feet; thence North 31 degrees 19 minutes 33 seconds East (N 31°19'33" E), a distance of 240.00 feet; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 418.13 feet; thence North 07 degrees 30 minutes 19 seconds East (N 07°30'19" E), a distance of 94.49 feet; thence North 58 degrees 04 minutes 10 seconds West (N 58°04'10" W), a distance of 261.08 feet; thence South 52 degrees 42 minutes 15 seconds West (S 52°42'15" W), a distance of 81.06 feet; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 414.12 feet; thence South 33 degrees 24 minutes 17 seconds West (S 33°24'17" W), a distance of 90.58 feet; thence North 57 degrees 40 minutes 48 seconds West (N 57°40'48" W), a distance of 52.07 feet; thence North 33 degrees 24 minutes 17 seconds East (N 33°24'17" E), a distance of 115.46 feet; thence South 56 degrees 35 minutes 40 seconds East (S 56°35'40" E), a distance of 258.17 feet; thence North 33 degrees 49 minutes 38 seconds East (N 33°49'38" E), a distance of 472.87 feet; thence North 56 degrees 34 minutes 02 seconds West (N 56°34'02" W), a distance of 665.06 feet; thence North 33 degrees 53 minutes 32 seconds East (N 33°53'32" E), a distance of 384.57 feet to a point on the Southerly right-of-way line of the Denver and Rio Grand Railroad; thence along said right-of-way South 56 degrees 41 minutes 00 seconds East (S 56°41'00" E), a distance of 1473.79 feet to the TRUE POINT OF BEGINNING. Said Parcel containing 37.816 acres as described.

Said parcel being subject to easements and right-of-ways of record as recorded in the Mesa County Clerk and Recorder's Office.

Prepared by: Dennis W. Johnson, PLS
Professional Surveying Services
PO Box 4506
Grand Junction, CO 81502
303-241-3841
Jan. 27, 1994
9391A6.LGL

EXHIBIT B

EASEMENT DESCRIPTIONS

EASEMENT NO. 1

A 25.0 foot wide easement for non-exclusive ingress, egress and the installation and maintenance of utilities located in the NE1/4 of Section 11, Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00 E a distance of 2629.24 for a basis of bearings, with all bearings contained herein relative thereto; thence South 26 degrees 13 minutes 35 seconds West (S 26°13'35" W), a distance of 1628.11 feet to a point on the boundary of Parcel 1 of Tract A as described in Book _____, Page _____ of the Records of the Mesa County Clerk and Recorder), and the TRUE POINT OF BEGINNING; thence North 56 degrees 17 minutes 10 seconds West (N 56°17'10" W), a distance of 329.06 feet; thence North 52 degrees 42 minutes 14 seconds East (N 52°42'14" E), a distance of 26.44 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 308.15 feet; thence South 07 degrees 30 minutes 20 seconds West (S 07°30'20" W), a distance of 27.86 feet to the TRUE POINT OF BEGINNING; and containing .183 acres, or 7965 square feet as described.

EASEMENT #2

An easement for non-exclusive ingress, egress and the installation and maintenance of utilities located in the NE1/4 of Section 11, Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00 E a distance of 2629.24 for a basis of bearings, with all bearings contained herein relative thereto; thence South 54 degrees 05 minutes 51 seconds West (S 54°05'51" W), a distance of 1696.92 feet to a point on the boundary of Parcel 1 of Tract A as described in Book _____, Page _____ of the Records of the Mesa County Clerk and Recorder), and the TRUE POINT OF BEGINNING; thence South 33 degrees 24 minutes 17 seconds West (S 33°24'17" W), a distance of 25.00 feet; thence North 56 degrees 35 minutes 43 seconds West (N 56°35'43" W), a distance of 613.78 feet; thence South 33 degrees 19 minutes 13 seconds West (S 33°19'13" W), a distance of 78.44 feet; thence North 56 degrees 51 minutes 30 seconds West (N 56°51'30" W), a distance of 106.51 feet; thence North 33 degrees 08 minutes 30 seconds East (N 33°08'30" E), a distance of 103.93 feet; thence South 56 degrees 35 minutes 43 seconds East (S 56°35'43" E), a distance of 720.65 feet to the TRUE POINT OF BEGINNING; and containing .606 acres, or 26405 square feet. as described.

EASEMENT #3

A 10.0 foot electric easement located in the NE1/4 of Section 11, Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00" E a distance of 2629.24 for a basis of bearings, with all bearings contained herein relative thereto; thence South 70 degrees 11 minutes 32 seconds West (S 70°11'32" W), a distance of 1982.17 feet to a point on the boundary of Easement No. 2 as described above and the TRUE POINT OF BEGINNING; thence North 57 degrees 03 minutes 35 seconds West (N 57°03'35" W), a distance of 10.00 feet; thence North 32 degrees 28 minutes 32 seconds East (N 32°28'32" E), a distance of 502.06 feet; thence South 57 degrees 31 minutes 28 seconds East (S 57°31'28" E), a distance of 10.00 feet; thence South 32 degrees 28 minutes 32 seconds West (S 32°28'32" W), a distance of 502.14 feet to the TRUE POINT OF BEGINNING; and containing .115 acres, or 5021 square feet as described..

Prepared by: Dennis W. Johnson, PLS
Professional Surveying Services
PO Box 4506
Grand Junction, CO 81502
303-241-3841
Jan. 21, 1994

to Purchase Agreement

SPECIAL WARRANTY DEED

FRUITA RP HOLDING, INC., a Delaware corporation (Grantor), whose address is 6500 Stapleton Drive South, Suite F204, Denver, Colorado 80216, for the consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, hereby sells and quit claims to LANDMARK PETROLEUM, INC., a Delaware corporation (Grantee), whose address is 1493 Highway 6 & 50, Fruita, Colorado 81521, the following real property, in the County of Mesa and State of Colorado, to-wit:

That certain easement for ingress and egress described upon Exhibit A, attached hereto and incorporated herein by this reference, for the benefit of Grantee, its successors and assigns,

with all its appurtenances and warrants the title against all persons claiming under it.

Signed and delivered this _____ day of February, 1994.

FRUITA RP HOLDING, INC., a
Delaware corporation

By _____
KEITH HOLDER, President

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of February, 1994, by _____, the _____ of FRUITA RP Holding, Inc., a Delaware corporation.

My commission expires: _____

(SEAL)

Notary Public

Name and Address of Person Creating Newly Created Legal Description (38-35-106.5 C.R.S.): Jeffrey C. Fletcher, PLS, Professional Surveying Services, P.O. Box 4506, Grand Junction, Colorado 81502.

EXHIBIT A

INGRESS / EGRESS EASEMENT

An Ingress / Egress easement over and across the following parcel of land situated in the NE 1/4 of Section 11, Township 1 North, Range 3 West of the Ute Meridian, Mesa County, Colorado, being more particularly described as follows:

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, from whence the East 1/4 corner of Section 11 bears South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E) a distance of 2629.24 feet for a basis of bearings, with all bearings contained herein relative thereto; thence South 00 degrees 07 minutes 00 seconds East (S00°07'00" E) a distance of 872.57 feet along the East line of the Northeast quarter (NE1/4) of Section 11 to a point on the Southerly right-of-way line of the Denver and Rio Grand Railway, and the TRUE POINT OF BEGINNING; thence South 00 degrees 07 minutes 00 seconds East (S00°07'00"E) a distance of 1080.56 feet; thence North 89 degrees 53 minutes 00 seconds West (N 89°53'00" W) a distance of 30.00 feet; thence North 00 degrees 07 minutes 00 seconds West (N 00°07'00" W) a distance of 1100.27 feet to a point on the Southerly right-of-way line of the Denver and Rio Grand Railway; thence South 56 degrees 41 minutes 00 seconds East (S 56°41'00" E) a distance of 35.95 feet to the TRUE POINT OF BEGINNING.

Containing 0.73 acres as described.

Prepared by Jeffrey C. Fletcher, PLS
Professional Surveying Services
PO Box 4506
Grand Junction, CO 81502
303-241-3841
Feb. 10, 1994
9391Ing.LGL

SPECIAL WARRANTY DEED

LANDMARK PETROLEUM, INC., a Delaware Corporation (Grantor), whose address is 1493 Highway 6 & 50, Fruita, Colorado 81521, for the consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, hereby sells and conveys to LANDMARK PETROLEUM, INC. a Delaware Corporation (Grantee), whose address is 1493 Highway 6 & 50, Fruita, Colorado 81521, the following real property in the County of Mesa and State of Colorado, to-wit:

That certain real property described upon Exhibit A, attached hereto and incorporated herein by this reference,

also known as street and number 1493 Highway 6 & 50, Fruita, Colorado 81521, with all its appurtenances and warrants the title against all persons claiming under it.

Signed and delivered this _____ day of February, 1994.

GRANTOR:

LANDMARK PETROLEUM, INC., a
Delaware corporation

By _____

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day of February, 1994, by _____, the _____ of Landmark Petroleum, Inc., a Delaware corporation.

My commission expires: _____

(SEAL)

Notary Public

Name and Address of Person Creating Newly Created Legal Description (38-35-106.5 C.R.S.): Dennis W. Johnson, PLS, Professional Surveying Services, P.O. Box 4506, Grand Junction, CO 81502.

EXHIBIT A

PARCEL 2 OF TRACT A

A parcel of land located in the SE1/4 of Section 2, the NE1/4 of Section 10, and Section 11 Township 1 North, Range 3 West of the Ute Meridian, Mesa County Colorado, being more particularly described as follows;

Commencing at the Northeast corner of Section 11, Township 1 North, Range 3 West, whence the East 1/4 corner of Section 11 bears S 00°07'00" E a distance of 2629.24 feet for a basis of bearings, with all bearings contained herein relative thereto; thence S 00°07'00" E a distance of 872.57 feet along the East line of the Northeast quarter (NE1/4) of Section 11 to a point on the Southerly right-of-way line of the Denver and Rio Grand Railroad; thence North 56 degrees 41 minutes 00 seconds West (N 56°41'00" W), a distance of 1473.79 feet along said railroad right-of-way, to the TRUE POINT OF BEGINNING; thence South 33 degrees 53 minutes 32 seconds West (S 33°53'32" W), a distance of 384.57 feet; thence South 56 degrees 34 minutes 02 seconds East (S 56°34'02" E), a distance of 665.06 feet; thence South 33 degrees 49 minutes 38 seconds West (S 33°49'38" W), a distance of 472.87 feet; thence North 56 degrees 35 minutes 40 seconds West (N 56°35'40" W), a distance of 258.17 feet; thence South 33 degrees 24 minutes 17 seconds West (S 33°24'17" W), a distance of 115.46 feet; thence South 57 degrees 40 minutes 48 seconds East (S 57°40'48" E), a distance of 52.07 feet; thence North 33 degrees 24 minutes 17 seconds East (N 33°24'17" E), a distance of 90.58 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 414.12 feet; thence North 52 degrees 42 minutes 15 seconds East (N 52°42'15" E), a distance of 81.06 feet; thence South 58 degrees 04 minutes 10 seconds East (S 58°04'10" E), a distance of 261.08 feet; thence South 07 degrees 30 minutes 19 seconds West (S 07°30'19" W), a distance of 94.49 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 418.13 feet; thence South 31 degrees 19 minutes 33 seconds West (S 31°19'33" W), a distance of 240.00 feet; thence South 58 degrees 50 minutes 11 seconds East (S 58°50'11" E), a distance of 115.86 feet; thence North 33 degrees 42 minutes 50 seconds East (N 33°42'50" E), a distance of 234.64 feet; thence South 56 degrees 17 minutes 10 seconds East (S 56°17'10" E), a distance of 289.73 feet; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 842.93 feet; thence South 70 degrees 59 minutes 23 seconds West (S 70°59'23" W), a distance of 383.97 feet; thence South 00 degrees 06 minutes 58 seconds East (S 00°06'58" E), a distance of 374.74 feet; thence North 89 degrees 53 minutes 00 seconds East (N 89°53'00" E), a distance of 363.28 feet; thence South 00 degrees 07 minutes 00 seconds East (S 00°07'00" E), a distance of 611.55 feet; thence South 44 degrees 02 minutes 01 seconds West (S 44°02'01" W), a distance of 564.53 feet to a point on the North bank of the Colorado River; thence the following 4 courses along the North bank of the Colorado River: (1) North 61 degrees 31 minutes 53 seconds West (N 61°31'53" W), a distance of 541.72 feet; (2) North 85 degrees 19 minutes 06 seconds West (N 85°19'06" W), a distance of 615.61 feet; (3) South 69 degrees 33 minutes 17 seconds West (S 69°33'17" W), a distance of 1015.56 feet; (4) South 45 degrees 30 minutes 57 seconds West (S 45°30'57" W), a distance of 384.19 feet to a point on the Northerly right-of-way of Interstate 70, thence the following 4 courses along the Northerly right-of-way of Interstate 70; (1) along a curve to the right having a radius of 11359.20 feet, arc length of 4261.46 feet, delta angle of 21 degrees 29 minutes 41 seconds (21°29'41"), a chord bearing of North 51 degrees 44 minutes 01 seconds West (N 51°44'01" W), and a chord length of 4236.51 feet; (2) North 40 degrees 59 minutes 10 seconds West (N

40°59'10" W), a distance of 400.50 feet; (3) North 32 degrees 26 minutes 20 seconds West (N 32°26'20" W), a distance of 309.30 feet; (4) along a curve to the left having a radius of 3969.70 feet, arc length of 130.31 feet, delta angle of 1 degree 52 minutes 51 seconds (1°52'51"), a chord bearing of North 44 degrees 10 minutes 50 seconds West (N 44°10'50" W), and a chord length of 130.30 feet; thence leaving said right-of-way North 00 degrees 50 minutes 33 seconds West (N 00°50'33" W), a distance of 644.86 feet; thence North 89 degrees 09 minutes 42 seconds East (N 89°09'42" E), a distance of 22.71 feet; thence South 32 degrees 55 minutes 25 seconds East (S 32°55'25" E), a distance of 264.97 feet; thence South 11 degrees 48 minutes 58 seconds West (S 11°43'58" W), a distance of 270.91 feet; thence South 48 degrees 11 minutes 15 seconds East (S 48°11'15" E), a distance of 859.15 feet; thence South 41 degrees 40 minutes 17 seconds East (S 41°40'17" E), a distance of 148.14 feet; thence South 20 degrees 12 minutes 02 seconds East (S 20°12'02" E), a distance of 434.73 feet; thence South 31 degrees 42 minutes 25 seconds East (S 31°42'25" E), a distance of 203.83 feet; thence South 63 degrees 51 minutes 48 seconds East (S 63°51'48" E), a distance of 484.33 feet; thence South 86 degrees 31 minutes 14 seconds East (S 86°31'14" E), a distance of 158.42 feet; thence North 41 degrees 43 minutes 28 seconds East (N 41°43'28" E), a distance of 62.52 feet; thence South 89 degrees 56 minutes 00 seconds East (S 89°56'00" E), a distance of 767.57 feet; thence South 01 degrees 13 minutes 31 seconds East (S 01°13'31" E), a distance of 58.91 feet; thence South 89 degrees 34 minutes 20 seconds East (S 89°34'20" E), a distance of 1003.06 feet; thence North 09 degrees 38 minutes 43 seconds West (N 09°38'43" W), a distance of 249.49 feet; thence North 39 degrees 13 minutes 56 seconds West (N 39°13'56" W), a distance of 131.38 feet; thence North 59 degrees 12 minutes 29 seconds West (N 59°12'29" W), a distance of 125.97 feet; thence North 00 degrees 34 minutes 39 seconds East (N 00°34'39" E), a distance of 318.00 feet; thence North 09 degrees 38 minutes 07 seconds East (N 09°38'07" E), a distance of 551.22 feet; thence North 69 degrees 50 minutes 17 seconds East (N 69°50'17" E), a distance of 307.09 feet; thence South 56 degrees 47 minutes 45 seconds East (S 56°47'45" E), a distance of 612.77 feet; thence South 32 degrees 13 minutes 29 seconds West (S 32°13'29" W), a distance of 178.70 feet; thence South 56 degrees 44 minutes 51 seconds East (S 56°44'51" E), a distance of 66.38 feet; thence South 28 degrees 52 minutes 33 seconds West (S 28°52'33" W), a distance of 433.57 feet; thence South 68 degrees 32 minutes 14 seconds East (S 68°32'14" E), a distance of 737.09 feet; thence South 61 degrees 16 minutes 50 seconds East (S 61°16'50" E), a distance of 299.30 feet; thence North 31 degrees 46 minutes 50 seconds East (N 31°46'50" E), a distance of 101.53 feet; thence North 58 degrees 27 minutes 39 seconds West (N 58°27'39" W), a distance of 298.31 feet; thence North 01 degrees 32 minutes 36 seconds West (N 01°32'36" W), a distance of 218.60 feet; thence North 32 degrees 56 minutes 45 seconds East (N 32°56'45" E), a distance of 345.01 feet; thence North 56 degrees 22 minutes 59 seconds West (N 56°22'59" W), a distance of 698.15 feet; thence North 22 degrees 46 minutes 44 seconds West (N 22°46'44" W), a distance of 312.10 feet; thence North 33 degrees 18 minutes 45 seconds East (N 33°18'45" E), a distance of 296.66 feet; thence North 56 degrees 35 minutes 17 seconds West (N 56°35'17" W), a distance of 214.74 feet; thence South 32 degrees 28 minutes 42 seconds West (S 32°28'42" W), a distance of 631.90 feet; thence North 47 degrees 11 minutes 13 seconds West (N 47°11'13" W), a distance of 209.61 feet; thence North 42 degrees 34 minutes 43 seconds East (N 42°34'43" E), a distance of 544.55 feet; thence North 29 degrees 35 minutes 16 seconds West (N 29°35'16" W), a distance of 298.77 feet; thence North 34 degrees 27 minutes 49 seconds East (N 34°27'49" E), a distance of 271.33 feet; thence South 59 degrees 05 minutes 40 seconds East (S 59°05'40" E), a distance of 298.49 feet; thence North 32 degrees 06 minutes 52 seconds East

(N 32°05'52" E), a distance of 166.80 feet; thence South 44 degrees 31 minutes 02 seconds East (S 44°31'02" E), a distance of 218.40 feet; thence North 33 degrees 33 minutes 41 seconds East (N 33°33'41" E), a distance of 45.53 feet; thence North 57 degrees 02 minutes 42 seconds West (N 57°02'42" W), a distance of 131.96 feet; thence North 33 degrees 33 minutes 52 seconds East (N 33°33'52" E), a distance of 68.49 feet; thence South 60 degrees 44 minutes 32 seconds East (S 60°44'32" E), a distance of 33.52 feet; thence North 33 degrees 29 minutes 45 seconds East (N 33°29'45" E), a distance of 86.70 feet; thence South 56 degrees 35 minutes 23 seconds East (S 56°35'23" E), a distance of 131.91 feet; thence North 33 degrees 04 minutes 32 seconds East (N 33°04'32" E), a distance of 21.50 feet; thence North 56 degrees 55 minutes 28 seconds West (N 56°55'28" W), a distance of 31.33 feet; thence North 33 degrees 43 minutes 06 seconds East (N 33°43'06" E), a distance of 36.91 feet; thence South 56 degrees 25 minutes 59 seconds East (S 56°25'59" E), a distance of 101.55 feet; thence South 33 degrees 01 minutes 00 seconds West (S 33°01'00" W), a distance of 13.57 feet; thence South 57 degrees 02 minutes 09 seconds East (S 57°02'09" E), a distance of 34.90 feet; thence South 32 degrees 57 minutes 51 seconds West (S 32°57'51" W), a distance of 4.35 feet; thence South 56 degrees 29 minutes 07 seconds East (S 56°29'07" E), a distance of 111.95 feet; thence North 33 degrees 22 minutes 49 seconds East (N 33°22'49" E), a distance of 41.69 feet; thence North 56 degrees 58 minutes 03 seconds West (N 56°58'03" W), a distance of 65.92 feet; thence North 32 degrees 32 minutes 02 seconds East (N 32°32'02" E), a distance of 65.75 feet; thence North 56 degrees 58 minutes 09 seconds West (N 56°58'09" W), a distance of 89.51 feet; thence North 32 degrees 22 minutes 45 seconds East (N 32°22'45" E), a distance of 35.88 feet; thence South 57 degrees 07 minutes 02 seconds East (S 57°07'02" E), a distance of 76.98 feet; thence North 43 degrees 10 minutes 35 seconds East (N 43°10'35" E), a distance of 142.24 feet; thence North 55 degrees 25 minutes 58 seconds East (N 55°25'58" E), a distance of 33.39 feet; thence North 33 degrees 18 minutes 50 seconds East (N 33°18'50" E), a distance of 106.81 feet; thence North 56 degrees 36 minutes 08 seconds West (N 56°36'08" W), a distance of 88.73 feet; thence North 32 degrees 34 minutes 45 seconds East (N 32°34'45" E), a distance of 152.28 feet to the Southerly right-of-way line of the Denver and Rio Grand Railroad; thence South 56 degrees 41 minutes 00 seconds East (S 56°41'00" E), a distance of 348.21 feet to the TRUE POINT OF BEGINNING. Said parcel containing 280.186 acres as described.

Said parcel being subject to easements and right-of-ways of record as recorded in the Mesa County Clerk and Recorder's Office.

Prepared by: Dennis W. Johnson, PLS
Professional Surveying Services
PO Box 4506
Grand Junction, CO 81502
303-241-3841
Jan. 27, 1994

ASSIGNMENT OF RIGHTS

THIS ASSIGNMENT OF RIGHTS (this "Assignment"), dated as of February 28, 1994, between Landmark Petroleum, Inc., a Delaware corporation ("Assignor"), and Wescourt Group, Inc., a Delaware corporation ("Assignee").

RECITALS

A. Assignor owns an oil refinery located at 1493 Highway 6 & 50, Fruita, Colorado, and comprised of certain real property, fixtures, personal property and other assets (collectively, the "Assets").

B. Assignor is a party to the agreements described on attached Schedule 1 (the "Assigned Agreements") with respect to certain of the Assets.

C. Assignor has agreed to sell to Assignee and Assignee has agreed to purchase from Assignor a portion of the Assets on the terms and subject to the conditions set forth in that certain Asset Purchase Agreement dated the date hereof between Assignor and Assignee (the "Asset Purchase Agreement").

D. Pursuant to the terms of the Asset Purchase Agreement, Assignee has agreed to execute and deliver this Assignment evidencing the assignment and assumption of certain rights and obligations under the Assigned Agreements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of the date hereof and subject to the terms and conditions of the Asset Purchase Agreement, Assignor does hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor's right, title and interest in and to each Assigned Agreement as and to the extent, but only to the extent, that such Assigned Agreement relates to the Transferred Assets.

2. Acceptance and Assumption. Effective as of the date hereof and subject to the terms and conditions of the Asset Purchase Agreement, Assignee hereby accepts the

assignment set forth in Section 1 hereof and agrees to assume, perform, and discharge all of the liabilities, obligations and duties of Assignor, if any, under each Assigned Agreement as and to the extent such Assigned Agreement relates to the Transferred Assets, but only to the extent such liabilities, obligations and duties arise after the date hereof.

3. No Amendment. This Assignment shall not alter, modify or amend the terms of any Assigned Agreement in any respect, nor shall it subject the Assignee or any other party to any Assigned Agreement to any greater liabilities, obligations or duties in connection therewith than would have been enforceable against the Assignor or such party if the assignment and assumption described herein had never occurred.

4. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. Governing Law. This Assignment will be governed by and construed and enforced in accordance with the laws of the State of New York.

6. Conflicts. To the extent there is a conflict between the terms and provisions of this Assignment and the Asset Purchase Agreement, the terms and provisions of the Asset Purchase Agreement will govern.

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

LANDMARK PETROLEUM, INC.,
a Delaware Corporation

By: _____
Richard Means,
Vice President

WESCOURT GROUP, INC.,
a Delaware Corporation

By: _____
Keith R. Holder,
President

Tab E

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is entered into as of February 28, 1994, between FRUITA MARKETING & MANAGEMENT, INC., a Delaware corporation ("Wescourt"), and LANDMARK PETROLEUM, INC., a Delaware corporation ("Landmark").

RECITALS

A. Landmark owns an oil refinery located at 1493 Highway 6 & 50, Fruita, Colorado, and comprised of certain real property, fixtures, personal property and other assets (collectively, the "Refinery Assets").

B. Simultaneously herewith, Landmark and Wescourt Group, Inc. ("Purchaser") are entering into an Asset Purchase Agreement pursuant to which Purchaser is acquiring from Landmark the portion of the Refinery Assets constituting the refinery's offices, laboratories, maintenance building, parking facilities, rail sidings, loading/unloading docks, storage tanks and truck and loading racks, all as more fully described in the Asset Purchase Agreement (the "Transferred Assets").

C. Simultaneously herewith, Landmark and Wescourt are entering into a Marketing Agreement (the "Marketing Agreement") pursuant to which Wescourt will act as Landmark's exclusive representative for the marketing and sale to third parties, in one or more sales ("Sales"), of all Refinery Assets other than the Transferred Assets (such other Refinery Assets, the "Assets").

D. In order to facilitate the Sales:

(1) prior to the date hereof, Landmark has prepared the Assets for sale by terminating all operations at the refinery and storing the Assets in accordance with industry practice, in each case in compliance with applicable legal requirements; and

(2) Landmark wishes to provide for the management of the Assets pending the Sales on the terms and conditions described herein.

E. Capitalized terms used in this Agreement without definition have the respective meanings set forth in the Marketing Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, Landmark and Wescourt hereby agree as follows:

1. Appointment of Wescourt.

1.1 Scope of Appointment. Landmark hereby appoints Wescourt as manager of the Assets with the responsibility for (1) overseeing the on-site maintenance and servicing of the Assets by Landmark's employees pending the Sales, (2) overseeing such steps as Wescourt may deem necessary or appropriate to facilitate the Sales, including, without limitation, to segregate Assets in preparation for Sales, (3) maintaining in effect existing permits for the Assets to the extent consistent with, and in the judgement of Wescourt helpful in facilitating, the Sales, and (4) providing the other services described on attached Exhibit A (collectively, the "Management Services"). Landmark and Wescourt expressly acknowledge and agree that the Management Services shall in no event be construed to include any obligation on the part of Wescourt to operate the Assets or any portion thereof.

1.2 Specific Duties of Wescourt. Without limiting the foregoing, the Management Services shall include the following specific duties:

(a) Repairs and Maintenance. Wescourt shall make, or cause to be made, all repairs and shall perform, or cause to be performed, all maintenance on the buildings, equipment, appurtenances and grounds constituting the Assets in accordance with industry standards for maintenance of a decommissioned refinery facility. Wescourt shall arrange for periodic inspections of the Assets in accordance with industry practice in the area in which the Assets are located;

(b) Equipment and Supplies. Wescourt shall make all arrangements for the furnishing to the Assets of utility, maintenance and other services and for the acquisition of such equipment and supplies as may be necessary for the maintenance and servicing of the Assets, in their decommissioned state, pending the Sales;

(c) Personnel. Wescourt shall employ as employees of Wescourt or other Wescourt Persons, such personnel as Wescourt may reasonably deem necessary for the performance of its obligations hereunder;

(d) Insurance. Wescourt shall cause to be kept in force and effect the forms of insurance currently in effect with respect to the Assets, subject to such modifications as may reasonably required by Landmark (or reasonably decided upon by Wescourt with Landmark's consent in the absence of Landmark's express instructions), including, without limitation, officer's and director's insurance, public liability insurance, fire and extended coverage insurance, and burglary and theft insurance. Wescourt shall promptly investigate and make a timely written report to Landmark as to all accidents and claims of which Wescourt has knowledge relating to the ownership and maintenance of the Assets, or any damage or destruction to the Assets, and shall prepare any and all reports required by any insurance company in connection therewith. Wescourt shall have no right to settle, compromise or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance, without prior written consent of Landmark;

(e) Notices. Wescourt shall deliver forthwith to Landmark copies of all material written notices received by Wescourt from any governmental or official entity with respect to the Assets; and

(f) Wescourt shall provide the services described on attached Exhibit A.

1.3 Management of the Assets. Wescourt shall devote reasonable commercial efforts to the management of the Assets, and shall perform its duties hereunder in a accordance with industry standards.

1.4 Use and Maintenance of the Assets. Landmark and Wescourt each agrees not to permit the use of the Assets for any purpose or in any manner that might void any policy of insurance with respect to the Assets or that would be in violation of any applicable law or governmental regulation.

2. Records, Reports.

2.1 Financial Records. Wescourt shall maintain a comprehensive system of office records, books and accounts, all of which shall belong to Landmark. Landmark and others designated by Landmark shall have access to such records, accounts and books upon reasonable notice during regular business hours.

2.2 Reports. Wescourt shall furnish to Landmark, within thirty (30) days after the end of each of Wescourt's fiscal quarters, a report describing the activities of

Wescourt hereunder during the then-ended quarter and any material change in the condition of the Assets.

3. Compensation for Management Services. Wescourt shall be entitled to receive out of the proceeds of any Sales, reimbursement for its actual costs in performing the Management Services hereunder. Any payments made pursuant to the terms hereof shall be Sales Expenses under the Marketing Agreement and shall be reimburseable to Wescourt as provided therein.

4. Term and Termination.

4.1 Term. This Agreement shall commence on the date hereof and, subject to Section 4.2, continue in effect for a period of five (5) years (the "Term").

4.2 Termination.

(a) By Landmark. If Wescourt defaults in the performance of any of its material obligations hereunder, Landmark may give written notice to Wescourt thereof. If such default is not corrected or otherwise addressed by Wescourt to Landmark's reasonable satisfaction within sixty (60) days after Wescourt's receipt of such notice, then Landmark may terminate this Agreement upon thirty (30) days prior written notice to Wescourt.

(b) By Wescourt. Wescourt may, at any time during the Term, terminate this Agreement immediately upon written notice to Landmark if Landmark defaults in its material obligations to Wescourt hereunder or if Wescourt concludes that its continued performance of the Management Services, including its performance of any tasks specifically requested by Landmark hereunder, could reasonably be expected to result in material liabilities to Wescourt.

5. Landmark's Approval. Whenever Landmark's approval or consent is required pursuant to this Agreement with respect to a matter concerning the management of the Assets by Wescourt, such approval or consent shall be deemed granted unless Landmark notifies Wescourt, within ten (10) business days following receipt by Landmark of Wescourt's written request for such approval or consent, that Landmark is withholding its approval or consent.

6. Indemnification.

6.1 Landmark's Indemnity. Landmark shall protect, indemnify and hold harmless each Wescourt Person from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, and expenses of any kind whatsoever (collectively, "Losses") which may at any time be imposed on, incurred by or asserted against any Wescourt Person resulting from the performance of the Management Services by Wescourt or any act or omission which Wescourt is required or instructed to do hereunder, except to the extent arising out of such Wescourt Person's gross negligence or willful misconduct.

6.2 Wescourt's Indemnity. Wescourt shall protect, indemnify and hold harmless Landmark, its officers, employees and agents from and against any and all Losses which may at any time be imposed on, incurred by or asserted against any such person as a result of (i) any breach or default by Wescourt hereunder or (ii) the gross negligence or willful misconduct of Wescourt.

6.3 Limitation of Liability. NOT WITHSTANDING ANY OTHER PROVISION HEREOF, IN NO EVENT SHALL ANY WESCOURT PERSON BE LIABLE TO ANY PARTY FOR ANY CONSEQUENTIAL DAMAGES (MEANING DAMAGES THAT DO NOT ARISE OUT OF THE SUBJECT TRANSACTION BETWEEN THE PARTIES HERETO OR CHASE BUT DAMAGES THAT ARISE OUT OF THE DEALINGS BETWEEN LANDMARK OR CHASE AND A THIRD-PARTY), INCLUDING, WITHOUT LIMITATION, ARISING OUT OF THE SALE OF THE ASSETS, WHETHER UNDER A THEORY OF CONTRACT, TORT, INDEMNITY, OR OTHERWISE; OR PUNITIVE DAMAGES OF ANY KIND. IN NO EVENT SHALL THE TOTAL LIABILITY OF ALL WESCOURT PERSONS HEREUNDER EXCEED THE TOTAL COMMISSIONS PAID TO WESCOURT HEREUNDER, EXCEPT TO THE EXTENT THAT THE SAME RESULTS FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF WESCOURT.

7. No Agency. Wescourt shall be responsible for all of its employees and employees of any affiliate, the supervision of all persons performing services in connection with the performance of all of Wescourt's obligations relating to the maintenance and operation of the Assets, and for determining the manner and time of performance of all acts hereunder. Nothing herein contained shall be construed to establish Wescourt as agent of Landmark.

8. Assignment. Wescourt may not assign this Agreement without the prior written approval of Landmark, which approval may be withheld by Landmark in its sole discretion. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9. Communications. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered personally, or (b) 48 hours after being sent by facsimile with duplicate sent by courier service. Such communications shall be directed as follows:

To Landmark at:

Landmark Petroleum
1493 Highway 6 & 50
Fruita, Colorado 81521
Att'n: Mr. Richard Means
Fax: (303) 858-9194

with copies to:

The Chase Manhattan Bank, N.A.
One Chase Manhattan Plaza
Tenth Floor
New York, New York 10081
Att'n: Mr. Stanley M. Guralnick
Fax: (212) 422-6249

To Wescourt at:

Fruita Marketing & Management, Inc.
c/o Wescourt Group, Inc.
2401 River Road
Grand Junction, Colorado 81505
Att'n: Keith Holder
Fax: (303) 241-5319

Any party may change its address for purposes of this Section 9 by giving the other party notice of the new address in the manner set forth above.

10. Captions and Headings. The captions contained herein are for convenience and reference only and shall not affect the meaning, scope, intent, or interpretation of this Agreement or its provisions.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings, written and oral with respect thereto. No prior draft of this Agreement nor any parole evidence shall be admissible to prove the meaning or intent of any provision of this Agreement.

12. Amendment or Modification. This Agreement may only be amended, modified or supplemented by a written instrument specifically referring to this Agreement and signed by Landmark and Wescourt.

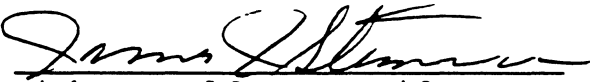
13. Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New York.

14. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of any such provision in any other jurisdiction, unless such prohibition or unenforceability frustrates the overall objective of this Agreement.

15. Counterparts. This Agreement will be executed in counterparts, and the several counterparts shall constitute one executed Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first written above.

FRUITA MARKETING & MANAGEMENT, INC.,
a Delaware corporation

By: 
~~Keith R. Holder~~, President
James J. Stemrick

LANDMARK PETROLEUM, INC.
a Delaware corporation

By: _____
Richard Means, Vice President

12. Amendment or Modification. This Agreement may only be amended, modified or supplemented by a written instrument specifically referring to this Agreement and signed by Landmark and Wescourt.

13. Governing Law. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New York.

14. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of any such provision in any other jurisdiction, unless such prohibition or unenforceability frustrates the overall objective of this Agreement.

15. Counterparts. This Agreement will be executed in counterparts, and the several counterparts shall constitute one executed Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first written above.

FRUITA MARKETING & MANAGEMENT, INC.,
a Delaware corporation

By: _____
Keith R. Holder, President

LANDMARK PETROLEUM, INC.
a Delaware corporation

By: Richard D. Means
Richard Means, Vice President

Exhibit A
to Management Agreement

Additional Services

1. Wescourt shall perform all day-to-day accounting functions of Landmark relating to the ownership of the Assets including the preparation and timely filing of all tax returns and employment filings. At Landmark's request from time to time, Wescourt shall promptly deliver evidence of such filings to Landmark.

2. Wescourt shall be responsible for paying on behalf of Landmark, from and to the extent of Sales Proceeds, all costs relating to the operation of the Assets including, without limitation, the payment of employee wages (including, during the first two years of the term hereof, the payment of \$5,000.00 per calendar quarter to the individual appointed to the position of vice president for Landmark) ad valorem taxes, all other taxes and benefits incurred with respect to the Assets, insurance, and all other day-to-day expenses charged to Landmark and related to the ownership of the Assets. Such day-to-day expenses shall include reimbursement of Landmark for reasonable attorneys' fees incurred by Landmark in connection with (i) Landmark's continued compliance with the terms of the Management Agreement, Marketing Agreement and the Asset Purchase Agreement and (ii) the maintenance of the corporate existence of Landmark, including the preparation of documentation for annual meetings and other customary and necessary actions.

3. Wescourt shall use all reasonable efforts to ensure that Landmark complies fully with all federal, state and municipal laws, ordinances, regulations and orders relative to the Assets and shall prepare and file all regulatory filings required to be filed by Landmark to maintain permits required for the ownership (in a decommissioned state) and sale of the Assets.

Tab F

1 it was L.B. Consultants who were the owners of
2 Landmark, and then they brought in other people
3 did they?

4 A. Yes.

5 Q. Who did they bring in?

6 A. There was quite a few people
7 involved. As a matter of fact, the people that
8 went to work at the refinery, they could buy
9 shares at 5,000 in \$8 increments and be a
10 shareholder in the company.

11 The three biggest ones were -- well,
12 I can't remember his name offhand, but he used
13 to own a chemical company and Chase Manhattan.
14 I did have those papers that showed all that,
15 but --

16 Q. Do those papers exist somewhere?

17 A. Yes.

18 Q. Where is the location of those
19 papers?

20 A. I think I have a copy of them.

21 Q. Okay.

22 A. Gordon Smith, that's who the other
23 one was.

24 Q. Okay. And where is Gordon Smith?

25 A. Somewhere in -- I think he's in

Joppa H. Smith

1 there.

2 THE WITNESS: Oh, okay.

3 A. Originally I was to stay as a
4 Landmark employee. Wescourt said they didn't
5 want to keep me that way because they had to keep
6 two payrolls, and it was an extra expense, so
7 Chase Manhattan agreed to put me on the Wescourt
8 payroll, because Chase was actually paying my
9 wages. Wescourt was paying my wages, but Chase
10 was reimbursing Wescourt for my expenses, for my
11 salary.

12 Q. Okay. Let's stop there for a minute
13 and we'll get back into that.

14 I need just a few names. Who at
15 Chase Manhattan was the responsible party for
16 this transaction?

17 A. At that time it was Charlie, and I
18 can't think of his last name, but I can find it
19 in the records probably.

20 Q. Okay.

21 A. The last person that I talked to was
22 Nat Worsterstein, he was representing --

23 Q. Could you spell that?

24 A. Oh, boy.

25 Q. Nat, N-a-t, I'll help you on that

Joppa H. Smith

1 it to you.

2 Q. Great. Now, when you said at that
3 time, are you talking about February of '95?

4 A. That was in March of '94 that they
5 decided to do that.

6 Q. Okay. Now, when you say Chase
7 Manhattan, you mean the bank?

8 A. Yes, Chase Manhattan of New York
9 City.

10 Q. Okay. What was Chase Manhattan's
11 relationship to Landmark and to Wescourt?

12 A. To Landmark Petroleum, they loaned
13 money to Landmark to run the refinery. They
14 also owned about 12 percent of the shares in
15 Landmark.

16 Q. Okay. How about Wescourt, what was
17 their relation to Wescourt?

18 A. They were just -- we were getting the
19 contract with Wescourt to manage all of the
20 Landmark assets.

21 Q. Who is we?

22 A. Landmark and Chase Manhattan.

23 Q. And were you doing that in February
24 of 1995?

25 A. No, that was already done, we started

Joppa H. Smith

RUSK & RUSK COURT REPORTERS
Grand Junction, Colorado 81502
970-242-3074

1 that -- actually, we started negotiating that in
2 January of '94.

3 Q. In February of 1995 had that been
4 implemented?

5 A. Yes, it had.

6 Q. To where you were managing Wescourt's
7 assets on behalf of Chase?

8 A. No, I was not managing anything
9 on --

0 Q. This whole thing is confusing.

1 A. Yes, it is.

2 Q. And I'm trying to get a handle on it,
3 okay.

4 A. What I was doing, I was maintaining
5 the Landmark assets for Wescourt and Chase
6 Manhattan, to keep them in a sellable condition,
7 and also to clean up and do environmental work
8 and do mothballing to -- clean the tanks so they
9 would be sellable, clean all the oil, get all the
0 oil pumped out, get the tanks cleaned, get the
1 units cleaned, so that they would be safe to work
2 on and sell.

3 Q. Whose product was in the Joe Mecham
4 tank in January of 1995?

5 A. Well, there was a contract, which I

Joppa H. Smith

RUSK & RUSK COURT REPORTERS
Grand Junction, Colorado 81502
970-242-3074

Tab G

JUL 11 2000

JOANNE MCWEE CLERK
BY DEPUTY

BARBARA L. MAW #4081
A Professional Corporation
Attorney for Defendant
Chase Manhattan
185 South State Street, Suite 340
Salt Lake City, Utah 84111
Telephone: (801) 533-9700
Fax: (801) 533-8111

IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

JOSEPH MECHAM,)	ORDER
)	
Plaintiff,)	
)	
vs.)	
)	
BAND-IT IDEX, INC., a Delaware)	Civil No. 960800543
corporation, LANDMARK PETROLEUM,)	
INC., a Delaware corporation,)	
WESTCOURT MANAGEMENT, INC., a)	Judge A. Lynn Payne
Colorado corporation, PORTFIELD)	
INVESTMENTS, INC., a Colorado)	
corporation, FRUITA MARKETING &)	
MANAGEMENT, INC., a Delaware)	
corporation, CONSOLIDATED OIL &)	
GAS, a Colorado corporation, LARR'S,)	
INC., a Wyoming corporation, CHASE)	
MANHATTAN BANK, a New York)	
corporation, and JOHN DOES 1 through 9,)	
)	
Defendants.)	

Defendant, Chase Manhattan Bank's Motion for Summary Judgment came before the Honorable Judge Lynn Payne on April 11, 2000, Barbara L. Maw appearing on behalf of Chase Manhattan Bank and Wayne Freestone and David Cundick appearing on behalf of plaintiff, Joseph Mecham. Defendant filed a Motion for Summary Judgment and a Memorandum in Support thereof, plaintiff filed a Response to Defendant's Motion and Memorandum. Oral argument was requested and heard. After having read the briefs of counsel, having heard oral argument and being fully advised in the premises, the Court finds as follows:

A. Plaintiff conceded on the following issues.

1. Chase Manhattan Bank ("Chase") is not an employer or independent contractor, so there is no issue in this regard and summary judgment is granted as to this issue in favor of Chase.
2. There is no basis to pierce the corporate veil. As to this issue, summary judgment is granted in favor of Chase
3. No liability arises against defendant Chase Manhattan Bank based upon any ownership of stock. As to this issue, summary judgment is granted in favor of Chase.
4. Plaintiff acknowledges Chase does not have possession of the property, and as such incurs no direct liability as a possessor. As to this issue, summary judgment is granted in favor of Chase

B. As to the remaining allegations in which plaintiff claims that Chase Manhattan Bank and Landmark Petroleum, Inc., has a principal/agency relationship, the Court finds as follows.

1. Chase did not have veto power over the sale of the asserts, rather Chase had the power to agree or disagree. If they disagreed over the sale of an asset, the contract provided that the average of the previous two months expenses were used.

2. Chase exercised some control over the sale of the assets. It did so because of its position as a lienholder, not because of any principal/agency relationship. The Court found that a lienholder has a legitimate interest in approving sales of secured assets, otherwise assets would just disappear.

3. The Court acknowledged that Means continued to be employed by Landmark Petroleum, Inc., at the insistence of Chase. However, the Court noted that Means' wages came out of the approved monthly expenses. Because the wages came from the approved monthly expenses, the Court held that this does not establish a principal/agency relationship.

4. The Court found no allegation or evidence that Chase took part in any management of the company or had any input as to how the sale of assets was performed.

5. The Court determined that having Means onsite to oversee the sale did not establish an agency relationship unless Chase exercised some actual control. The Court found that Chase did not exert any actual control.

6. The Court found that Chase is not a principal of Landmark Petroleum, Inc..

The Court determined that Chase acted as a secured party and held that Chase was entitled to take steps to secure its interest in the property and to maintain control over it. The Court did not find anything unusual about Chase's position in this regard and found that it acted as a reasonable secured party under the circumstances.

7. The Court reasoned that a creditor should not be required to release its security interest as the result of a sale unless the amount is appropriate. Otherwise, fraud can be perpetrated on the secured party by selling the assets for a nominal amount. For this reason, the Court determined that the actions of Chase were appropriate and it did not exceed its position as a leinholder.

8. Lastly, the Court held there was a strong public policy interest in allowing a secured party to take reasonable steps to ascertain the value of its security interests and also be involved in how those assets are disposed of. In this regard, the Court found there was nothing Chase did to cross the line and become other than a secured creditor.

Based on the above findings, the Court held no principle/agency relationship was established between Chase and any other entity or individual and granted Summary Judgment in favor of Defendant Chase Manhattan Bank.

DATED this 3 day of ^{July}~~June~~, 2000.

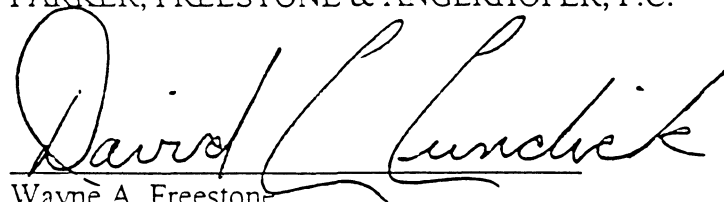
BY THE COURT:



HONORABLE A. LYNN PAYNE

APPROVAL AS TO FORM:

PARKER, FREESTONE & ANGERHOFER, P.C.



Wayne A. Freestone
David C. Cundick
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of June, 2000, a true and correct copy of the foregoing ORDER was mailed, first-class postage prepaid, to the following:

Attorneys for Plaintiff:

Wayne A. Freestone
David C. Cundick
PARKER, FREESTONE & ANGERHOFER, P.C.
50 West 300 South, Suite 900
Salt Lake City, UT 84101

Attorneys for Defendant Fruita Marketing & Mgt., Inc.:

Kevin D. Swenson
STRONG & HANNI
Nine Exchange Place
Sixth Floor, Boston Building
Salt Lake City, UT 84111

Brindice Brackshaw

Tab H

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
McKEACHNIE, ALLRED, McCLELLAN & TROTTER, P.C.
121 West Main Street
Vernal, Utah 84078
Telephone: (435)789-4908

ATTORNEYS FOR DEFENDANT
CONSOLIDATED OIL & TRANSPORTATION COMPANY, INC.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY

STATE OF UTAH

JOSEPH MECHAM,)	ORDER
)	
Plaintiff,)	
)	
vs.)	
)	
BAND-IT IDEX, INC., a Delaware,)	
Corporation, SEAL FAST INC.,)	
a Texas Corporation, KEYWAY)	
INTERNATIONAL, INC., a Texas)	
Corporation, MORCON SPECIALTY)	
INC., A Utah corporation, RED MAN)	
PIPE & SUPPLY, an Oklahoma)	
corporation, LANDMARK PETROLEUM,)	
INC., a Delaware corporation,)	
WESTCOURT MANAGEMENT, INC., a)	
Colorado corporation, PORTFIELD)	
INVESTMENTS INC., a Colorado)	
corporation, FRUITA MARKETING &)	
MANAGEMENT, INC., a Delaware)	
corporation, CONSOLIDATED OIL &)	
GAS, a Colorado corporation,)	
LARR's, INC., a Wyoming)	
CHASE MANHATTAN BANK, a New York)	
corporation, THE FIRESTONE TIRE &)	Civil No. 960800543
RUBBER COMPANY, and JOHN DOES 1)	
through 9,)	Judge A. Lynn Payne
)	
Defendants.)	

5. There is no relationship between the Plaintiff's injuries and the minimal contact the Defendant had with the state of Utah.

6. It is not alleged in the Amended Complaint and there has been no showing of any substantial and continuous activity in the state of Utah by Defendant that would give the Court jurisdiction.

7. The case of Arquello vs Industrial Woodworking Mach. Co., 828 P.2d 1120 (Utah 1992) is dispositive of this case.

8. There is not a sufficient nexus between the injury and the contacts of the Defendant in the state of Utah to give the Court jurisdiction under Arquello.

The Court therefore grants Consolidated Oil & Transportation Company, Inc.'s Motion to Dismiss for Lack of Jurisdiction and Orders that the Amended Complaint as to Defendant Consolidated Oil and Transportation Company, Inc. is dismissed for lack of jurisdiction.

DATED this 14 day of ^{April} ~~March~~, 2000.

Approved As To Form:

David C. Cundick
David C. Cundick, attorney
for Plaintiff

MB
A. Lynn Payne
District Judge

t:\consolid\order

Tab I

Wayne A. Freestone, #4481
David C. Cundick, #4817
Attorneys for Plaintiff
PARKER, FREESTONE, ANGERHOFER & HARDING, PC
50 West 300 South, Suite 900
Salt Lake City, Utah 84101
Telephone: (801) 328-5600
Fax No.: (801) 328-5651

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH
COUNTY OF UINTAH

JOSEPH MECHAM,

Plaintiff,

-vs-

BAND-IT IDEX, INC., a Delaware
corporation, SEAL FAST INCORPORATED,
a Texas corporation, KEYWAY
INTERNATIONAL, INC., a Texas
corporation, MORCON SPECIALTY,
INC., a Utah corporation, RED MAN PIPE &
SUPPLY, an Oklahoma corporation,
LANDMARK PETROLEUM, INC. a
Delaware corporation, WESTCOURT
MANAGEMENT INC., a Colorado
corporation, PORTFIELD INVESTMENTS
INC., a Colorado corporation, FRUITA
MARKETING & MANAGEMENT,
INC., a Delaware corporation,
CONSOLIDATED OIL & GAS, a
Colorado corporation, LAIR'S, INC. a
Wyoming corporation, CHASE
MANHATTAN BANK, a Delaware
corporation, and JOHN DOES 1 through 9,

Defendants.

SECOND AMENDED COMPLAINT

Case No.

COMES NOW Plaintiff Joseph Mecham and for cause of action alleges against the defendants and each of them as follows.

I. PARTIES

1. Plaintiff Joseph Mecham (“**MECHAM**”) is an individual who at all relevant times has resided at 2430 East 3500 South, City of Vernal, State of Utah.

2. Defendant Band-it IDEX, Inc. (“**BAND-IT**”) is a Delaware corporation doing business in the State of Utah with its corporate headquarters located at 225 Executive Drive, Moores Town, New Jersey. Defendant Band-it is engaged in the manufacturing of clamps and air tools.

3. Seal Fast Incorporated (“**SEAL FAST**”) is a Texas corporation doing business in the State of Utah with its corporate headquarters located at 5603 Harvey Wilson Drive, Houston, Texas. Defendant Seal Fast is engaged in the manufacturing and sales of couplings.

4. Keyway International, Inc. (“**KEYWAY**”) is a Texas corporation doing business in the State of Utah with its corporate headquarters located at 515 Stesco Avenue, Wichita Falls, Texas. Defendant Keyway is engaged in the oil refining business and has tanks located within the State of Utah.

5. Defendant Morcon Specialty, Inc. (“**MORCON**”) is a Utah corporation with its corporate headquarters located at 1222 East Highway 40, Vernal, Utah. Defendant Morcon is engaged in the business of, inter alia, attaching couplings and clamps to hoses.

6. Defendant Red Man Pipe & Supply (“**RED MAN**”) is an Oklahoma corporation doing business in within the State of Utah. Defendant Red Man is engaged in the business of selling couplings and/or hoses.

7. Defendant Landmark Petroleum, Inc. (“**LANDMARK**”) is a Delaware corporation doing business in the state of Utah. At all relevant times herein Defendant Landmark was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff’s injuries occurred.

8. Defendant Westcourt Management Inc. (“**WESTCOURT**”) is a Colorado corporation doing business in the State of Utah and the State of Colorado. At all relevant times herein Defendant Westcourt was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff’s injuries occurred.

9. Defendant Portfield Investments Inc. (“**PORTFIELD**”) is a Colorado corporation doing business in the State of Utah and State of Colorado. At all relevant times herein Defendant Portfield was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff’s injuries occurred.

10. Defendant Fruita Marketing & Management, Inc. (“**FRUITA**”) is a Delaware corporation doing business in the State of Utah and the State of Colorado. At all relevant times herein Defendant Fruita was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff’s injuries occurred.

11. Defendant Larr’s Inc. (“**LARR’S**”) is a Wyoming corporation doing business in the State of Utah and the State of Colorado. At all relevant times herein Defendant Larr’s was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff’s injuries occurred.

12. Defendant Chase Manhattan Bank (“**CHASE MANHATTAN**”) is believed to be a Delaware corporation doing business in the State of Utah and the State of Colorado. At all relevant times herein Defendant Chase Manhattan was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff’s injuries occurred.

13. Defendant Consolidated Oil & Gas, Inc. (“**CONSOLIDATED**”) is believed to be a Colorado corporation doing business in the state of Utah and the state of Colorado. At all relevant

times herein Defendant Consolidated was the owner and/or co-owner, operator and/or co-operator of certain portions of the land and/or petroleum products and/or storage tanks on which the incident causing plaintiff's injuries occurred.

14 Defendants Westcourt, Portfield, Fruita, Consolidated, Larr's and Chase Manhattan are hereinafter referred to jointly as "**PROPERTY OWNER/OPERATOR DEFENDANTS**".

15 John Does 1 - 9 are defendants whose true names and capacities are unknown to plaintiff at this time Plaintiff believes that such defendants have been negligent in a duty owed to plaintiff or otherwise responsible in some manner for the events and happenings herein referred to, and negligently or otherwise caused injuries and damages proximately thereby to the plaintiff as alleged herein Plaintiff's complaint will be amended to include the true identities of John Does 1 - 9 when such identities become known to plaintiff.

II. JURISDICTION

16 Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 15 as though fully set forth herein

17 Plaintiff is a resident of the City of Vernal, County of Uintah The acts complained of occurred, in most part in the County of Uintah The contract which is the subject of this lawsuit was entered into within the State of Utah and many of the witnesses to the events stated herein reside in the State of Utah

18 The amounts complained of are greater than \$1,000,000 Jurisdiction and venue are properly before this Court

III. FACTS

19 Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 18 as though fully set forth herein

20. At all times relevant herein, plaintiff was employed by Adler Hot Oil Service, Inc. (“**ADLER**”). Adler is engaged in the business of cleaning sludge from petroleum storage tanks.

21. The service which Adler performs consist of pumping hot oil from a truck owned and operated by Adler into a storage tank. The hot oil melts the sludge and returns from the storage tanks into the Adler truck with the hot oil that was pumped into the storage tank.

22. Plaintiff’s duties included driving the hot oil truck to various storage tanks. Plaintiff’s procedure in cleaning the storage tanks included connecting a hose between the hot oil truck and the storage tank. The hose has a coupling on each end. The coupling is secured by a band.

23. After Plaintiff fastened the coupling to the hot oil truck and the storage tank, Plaintiff would proceed to heat oil in his truck. After the oil was heated, plaintiff would pump the oil through the storage tank and back into the truck.

24. On or about the 10th day of March, 1995, Plaintiff was directed by Adler to pump the sludge out of a storage tank owned by the Property Owner/Operator Defendants.

25. Plaintiff drove his hot oil truck to the Property Owner/Operator Defendants’ premises and connected the hose to the hot oil truck and the pipe leading to the storage tank. After the oil was heated, Plaintiff began to pump the hot oil into the storage tank.

26. While the hot oil was being pumped into the storage tank, plaintiff observed the coupling begin to slip off of the hose.

27. Plaintiff attempted to rush to the shut off switch on the hot oil truck. Prior to his being able to shut off the operation, the hose failed at the coupling area and hot oil sprayed plaintiff’s person.

28. The hot oil supplied by the Property Owner/Operator Defendants had an extremely low flash point, below industry standards, resulting in a fire and an explosion.

29. Despite being covered in hot oil and being burned over 50% of his body, Plaintiff managed to shut off the operation.

III. NEGLIGENCE (ALL DEFENDANTS)

30. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 29 as though fully set forth herein.

31. At all times herein mentioned, Defendants Band-it, Seal Fast, Morcon and Red Man, and each of them (hereinafter referred to as “**PRODUCT LIABILITY DEFENDANTS**”), were engaged in the business of manufacturing, designing, assembling, compounding, testing, inspecting, packaging, labeling, fabricating, constructing, analyzing, distributing, servicing, merchandising, recommending, advertising, promoting, marketing, and/or selling hoses, bands oil, hot oil pumping systems, and/or couplings for resale to and use by members of the general public for purposes of use in the business of removing sludge from storage tanks.

32. At all time herein mentioned, Defendants John Does 1 through 9, and each of them, were engaged in the business of manufacturing, designing, assembling, compounding, testing, inspecting, fabricating, constructing, analyzing, distributing, servicing, merchandising, recommending, advertising, promoting, marketing, and/or selling hoses, bands oil, hot oil pumping systems and/or couplings for resale to and use by members of the general public for purposes of use in the business of removing sludge from storage tanks.

33. At all times herein mentioned, the Product Liability Defendants, acting through its officers, agents, servants or employees, and each of them, knew, or in the exercise of ordinary and reasonable care should have known that the said hose, band oil, hot oil pumping system and/or coupling was a product of such a nature that if it was not properly manufactured, designed, assembled, compounded, tested, inspected, fabricated, constructed, analyzed, distributed, serviced, merchandised, recommended, advertised, promoted, marketed and sold, for the use and purpose for which it was intended, it was likely to injure the person or persons be whom it was used.

34. The Product Liability Defendants, and each of them, acting through their officers, agents, servants, representatives or employees, negligently and carelessly manufactured, developed, designed

assembled, compounded, tested, inspected, fabricated, constructed, analyzed, distributed, serviced, merchandised, recommended, advertised, promoted, marketed and sold the said hose, band oil, hot oil pumping system and/or coupling, so that it was in a dangerous and defective condition, and was unsafe for the use and purpose for which it was intended when used as recommended by the defendants, and each of them.

35. The defective and dangerous character and condition of the said hose, band oil, hot oil pumping system and/or coupling, made the hose, band, oil, hot oil pumping system and/or coupling unsafe for the use and purpose for which they were intended when used as recommended by the Product Liability Defendants, was known to such defendants and each of them, or in the exercise of ordinary and reasonable care should have been known and discovered by such defendants and each of them. Furthermore, the dangerous and defective character and condition of the said hose, band, oil, hot oil pumping system and/or coupling was not made known to the plaintiff by the Product Liability Defendants and each of them.

36. Some time prior to March 10, 1995, Adler purchased and obtained the hose, band, oil, hot oil pumping system and coupling from the Product Liability Defendants for the purpose of using said hose, band, oil, hot oil pumping system and coupling in connection with the business of cleaning sludge from storage tanks.

37. On or about, March 10, 1995, while plaintiff was using the hose, band, oil, hot oil pumping system and coupling for its intended purpose, and as a proximate result of the negligence and carelessness of the defendant, the hose, band, oil, hot oil pumping system and/or coupling failed, thereby causing plaintiff to sustain burns over 50% of his body and medical expenses in excess of \$500,000. Such medical expenses are still accruing and will continue to accrue in the future.

38. Prior to March 10, 1995, the Property Owner/Operator Defendants retained plaintiff's services through Adler to clean out the tanks. The Property Owner/Operator Defendants supplied the oil that plaintiff was instructed to use. At all times herein mentioned, the Property

Owner/Operator Defendants, were under a duty to supply plaintiff with oil that had a flash point at or above industry standards. The Property Owner/Operator Defendants knew, or in the exercise of ordinary and reasonable care should have known that the oil supplied to plaintiff to clean the tanks had a very low flash point, below industry standards, and was easily combustible causing risk of injury to the person or persons who use it.

39. The industry standards provide that the owner/operator of a refinery is responsible for insuring that procedures such as the use and involvement of hot oil trucks are properly supervised to insure the safety of the operator of a hot oil truck.

40. The Property Owner/Operator Defendants had a duty to insure that the hot oil procedure was conducted in a safe manner.

41. The Property Owner/Operator Defendants breached their duty to plaintiff by failing to insure that the hot oil procedure was conducted in a safe manner thereby negligently causing the injuries suffered by plaintiff.

42. Plaintiff has suffered severe and excruciating pain and distressing mental anguish as a result of the injuries. Plaintiff has suffered, and for a long period of time to come will continue to suffer said pain and mental anguish as a result of said injuries.

43. As a direct and proximate result of said negligence and carelessness of Product Liability Defendants and Property Owner/Operator Defendants, and each of them, plaintiff has incurred, and will incur, medical expenses, loss of income, wages, and other pecuniary losses, the full nature and extent of which are not yet known to plaintiff but which will be shown at trial and are in a minimum amount of \$1,000,000.

IV. BREACH OF EXPRESS WARRANTY (PRODUCT LIABILITY DEFENDANTS)

44. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 43 as though fully set forth herein.

45. At all times relevant herein, on and prior to March 10, 1995, the Product Liability Defendants and each of them, acting through their officers, agents, servants, representatives, and employees utilized advertising media, professional publications and detail person to urge the use and purchase of said hose, band, oil, hot oil pumping system and coupling, and expressly warranting to plaintiff by advertisements, directed to the public and particularly to ultimate consumers, that those consumers, including this plaintiff, could safely use the hose, band, oil, hot oil pumping system and/or coupling. The Product Liability Defendants, and each of them, urged the use and purchase of said hose, band, oil, hot oil pumping system, and coupling, and expressly warranted to members of the general public, including Alder and the plaintiff that the said hose, band, oil, hot oil pumping system, and coupling was effective, proper and safe for its intended use

46. Plaintiff relied upon the skill and judgment of the Product Liability Defendants, and each of them, and on the express warranty representations of the defendants, and each of them, directed towards the public, and in particular the ultimate consumer, including the plaintiff, in use of said hose, band, oil, hot oil pumping system and coupling, and that the hose, band, oil, hot oil pumping system and/or coupling could be safely used for the purpose of cleaning sludge from oil storage tanks.

47. The said hose, band, oil, hot oil pumping system and coupling was not effective, proper and safe for its intended use as expressly warranted by Product Liability Defendants and each of them, in that the said hose, band, oil, hot oil pumping system and/or coupling was defective, thereby causing plaintiff's injuries when said hose, band, oil, hot oil pumping system and coupling were being put to their intended use.

48. As a proximate result of the breach of the said express warranty, plaintiff sustained the injuries and damages hereinabove set forth.

V. BREACH OF IMPLIED WARRANTY (PRODUCT LIABILITY DEFENDANTS)

49. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 48 as though fully set forth herein.

50. Prior to March 10, 1995, and prior to the time that the said hose, band, oil, hot oil pumping system and coupling were being used by plaintiff at the time of the injuries, the Product Liability Defendants and each of them acting through their officers, agents, servants, representatives and employees impliedly warranted to members of the general public, including the plaintiff herein, that the said hose, band, oil, hot oil pumping system and coupling was of merchantable quality and safe for the use for which it was intended by the defendants, namely, for the purpose of use in the business of removing sludge from storage tanks.

51. Plaintiff relied upon the skill and judgment of the Product Liability Defendants and each of them in the use of the hose, band, oil, hot oil pumping system and coupling.

52. The said hose, band, oil, hot oil pumping system and/or coupling was not fit for its intended use or purpose nor was it of merchantable quality as warranted by the Product Liability Defendants in that it failed thereby causing plaintiff the injuries complained of.

53. As a proximate result of the breach of the said express warranty, plaintiff sustained the injuries and damages hereinabove set forth.

VI. STRICT LIABILITY (PRODUCT LIABILITY DEFENDANTS)

54. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 53 as though fully set forth herein.

55. Defendants and each of them manufactured, designed, assembled, compounded, tested or failed to test, inspected or failed to inspect, constructed, analyzed, distributed, serviced, merchandised, recommended, advertised, promoted, marketed, and soled a certain hose, band, oil, hot oil pumping system and coupling and its component parts which was intended by the defendants

and each of them to be used for the purpose of removing sludge from storage tanks by use of a hot oil truck.

56. Defendants and each of them, acting through their officers, agents, servants, representatives and employees, knew and intended that said hose, band, oil, hot oil pumping system and coupling was to be purchased and used in the condition in which it was sold in an ultra hazardous activity, without inspection for defects by plaintiff and the general public.

57. The said hose, band, oil, hot oil pumping system and/or coupling was unsafe for its intended use by reason of defects in its manufacture, design, testing and components so that it would not safely serve its purpose, but would instead expose the users of said product to serious injury because of the failure of defendants, and each of them, to properly guard and protect the plaintiff from the defects of the said hose, band, oil, hot oil pumping system and coupling.

58. Plaintiff was not aware of the defects at any time prior to the injuries sustained by the plaintiff.

59. As a proximate result of the defects of the hose, band, oil, hot oil pumping system and/or coupling, plaintiff sustained the injuries and damages set forth above.

VII. STRICT LIABILITY (PROPERTY OWNER/OPERATOR DEFENDANTS)

60. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 59 as though fully set forth herein.

61. The Property Owner/Operator Defendants and each of them were involved with the operation of a refinery that involved ultra-hazardous materials and the processes associated in handling ultra-hazardous materials including the use and operations of a hot oil truck.

62. The Property Owner/Operator Defendants and each of them, acting through their officers, agents, servants, representatives and employees, knew and intended that the hot oil truck would be used in a ultra hazardous activity.

63. The procedures for which the Property Owner/Operator Defendants retained the services of the plaintiff were inherently unsafe and the manner in which the plaintiff was instructed by the Property Owner/Operator Defendants to conduct the hot oil pumping process was inherently unsafe.

64. Plaintiff was not aware that the procedures that he was being directed by the Property Owner/Operator Defendants to employ in operating the hot oil truck were inherently unsafe.

65. As a proximate result of the procedures employed by Property Owner/Operator Defendants, plaintiff sustained the injuries and damages set forth above.

VIII. FALSE REPRESENTATION (PRODUCT LIABILITY DEFENDANTS)

66. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 65 as though fully set forth herein.

67. At the time when the Product Liability Defendants, and each of them, manufactured, designed, assembled, compounded, tested or failed to test, inspected or failed to inspect, constructed, analyzed, distributed, serviced, merchandised, recommended, advertised, promoted, marketed, and sold the said hose, band oil, hot oil pumping system and coupling, the Product Liability Defendants, and each of them, expressly and impliedly represented to members of the general public, including the plaintiff herein, that the said hose, band, oil, hot oil pumping system and coupling were of merchantable quality, and safe for the use for which they were intended.

68. Plaintiff relief upon said representation of the Product Liability Defendants, and each of them, in the selection, purchase, and use of said hose, band, oil, hot oil pumping system and coupling.

69. Said representations by the Product Liability Defendants, and each of them, were false and untrue, in that the said hose, band, oil, hot oil pumping system and coupling were not safe for their intended use, nor were they of merchantable quality as represented by the Product Liability Defendants, and each of them, in that they had very dangerous properties and defects where such defects caused injury and damage to plaintiff, thereby threatening the life of Plaintiff.

70 As a proximate result of said false representations by the Product Liability Defendants, Plaintiff sustained the injuries and damages set forth above

IX. PUNITIVE DAMAGES (ALL DEFENDANTS)

71 Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 70 as though fully set forth herein

72 The conduct and acts of defendants, and each of them, as set forth above, in allowing such an extremely dangerous product to be used by a member of the general public, include the Plaintiff constitute a conscious disregard of the safety of the Plaintiff. Plaintiff is therefore entitled to exemplary or punitive damages, which would serve to punish and make examples of defendants, and each of them.

X. RELIEF

WHEREFORE, Plaintiff prays that this Court:

1 For judgment on his first claim for relief (Negligence) against all defendants in the minimum amount of \$1,000,000 as proven at the trial of this matter together with costs, interest and such further relief as the Court feels is just and equitable,

2 For judgment on his second claim for relief (Breach of Express Warranty) against the Product Liability Defendants in the minimum amount of \$1,000,000 as proven at the trial of this matter together with costs, interest and such further relief as the Court feels is just and equitable,

3 For judgment on his third claim for relief (Breach of Implied Warranty) against the Product Liability Defendants in the minimum amount of \$1,000,000 as proven at the trial of this matter together with costs, interest and such further relief as the Court feels is just and equitable,

4. For judgment on his fourth claim for relief (Strict Liability) against all defendants in the minimum amount of \$1,000,000 as proven at the trial of this matter together with costs, interest and such further relief as the Court feels is just and equitable;

5. For judgment on his fifth claim for relief (False Representation) against the Product Liability Defendants in the minimum amount of \$1,000,000 as proven at the trial of this matter together with costs, interest and such further relief as the Court feels is just and equitable; and,

6. For judgment on his sixth claim for relief (Punitive Damages) against all defendants in the minimum amount of \$5,000,000 as proven at the trial of this matter together with costs, interest and such further relief as the Court feels is just and equitable.

DATED this _____ day of June, 1998.

David C. Cundick

Plaintiff's address:

2430 East 3500 South
Vernal, Utah

Tab J

1 Q. Well, that's what I wanted to ask you about a
2 minute, if you know.

3 Landmark is a defendant in this lawsuit. Did you
4 have dealings with Landmark?

5 A. No.

6 Q. You had dealings with Consolidated Oil?

7 A. Yes.

8 Q. They hired you to do what you were going to do on
9 the 27th of February '95?

10 A. Yes.

11 Q. Who at Consolidated Oil hired you?

12 A. Excuse me?

13 Q. What human being did you deal with at Consolidated
14 Oil?

15 A. Shirley -- well, you know, I can't think of her
16 last name. Shirley something, Shirley -- seems like Holdis
17 or Holquist or something like that.

18 Q. Where is Shirley located?

19 A. Denver, Colorado.

20 Q. Have you ever met her in person?

21 A. No, I haven't.

22 Q. When did you first start getting jobs from
23 Shirley?

24 A. You know, I'd have to go back and look, I can't
25 really -- I know we did one tank, recirculated it, seems like

1 it was in the fall. What the deal was, we heated that tank,
2 we circulated it and got it going for him and then he
3 released us. And then they have their own heater and their
4 own pump, and once we got circulation going, then he used his
5 heater, Landmark Petroleum used their heater to heat the tank
6 on up.

7 Q. Are you telling me about some job other than the
8 one --

9 A. No, this is it.

10 Q. Mr. Mecham's February 27, '95 job?

11 A. No, no, that was before. Oh, I'm sorry. Okay.

12 That was the first job we did for them.

13 Q. Okay.

14 A. Joe was on it too.

15 Q. Was it at the same general --

16 A. Very same location.

17 Q. And where was that?

18 A. At Landmark, Fruita.

19 Q. Fruita, Colorado?

20 A. Right.

21 Q. Was that in the fall of 1994, keeping in mind --

22 A. I believe so. Yeah, I believe it was. And it had
23 to have been in the fall that we did that job. I don't think
24 there was snow on the ground or anything like that.

25 Q. But did Mr. Mecham's accident happen at what I'd

Tab K

COPY

EIGHTH DISTRICT COURT - VERNAL
UINTAH COUNTY, STATE OF UTAH

***.

JOSEPH MECHAM,)

Plaintiff,)

vs.)

Case No. 960800543

BAND-IT IDEX, INC.,)

Defendant.)

BEFORE THE HONORABLE A. LYNN PAYNE

April 11, 2000

2:30 P.M.

TRANSCRIPT OF VIDEO TAPE OF
MOTION FOR SUMMARY JUDGMENT.

Transcribed by:
Pam Smith, CSR, RMR
3454 Creek Road
Salt Lake City, Utah 84121
(801) 942-6430

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APPEARANCE OF COUNSEL:

For the Plaintiff:

DAVID C. CUNDICK
& WAYNE FREESTONE
Parker, Freestone & Angerhofer
Crescent Square, #13
11075 South State Street
Sandy, Utah 84070

For the Defendant:

BARBARA L. MAW
Attorney at Law
185 S. State, #340
Salt Lake City, Utah 84111

1 APRIL 11, 2000, VERNAL, UTAH

2 PROCEEDINGS.

3 THE COURT: Mecham versus Band-It.

4 Okay. Ms. Maw, you're here on the -- your motion
5 for summary judgment.

6 MS. MAW: That's correct, Your Honor.

7 THE COURT: Mr. Cundick's present.

8 MR. CUNDICK: Yes, Your Honor, as well as Mr.
9 Freestone.

10 THE COURT: And Mr. Freestone. Okay. You may
11 proceed.

12 MS. MAW: Your Honor, I'm sure as you're aware
13 this is Chase Manhattan Bank's motion for summary judgement.
14 It's our position that Chase Manhattan Bank with respect to
15 this refinery in Fruita, Colorado, has always been a lender.
16 They have never been in any other relationship with any of
17 the parties.

18 What controls this relationship are the contracts
19 that were entered into between Landmark, Westcourt and only
20 with Chase Manhattan Bank's consent.

21 Is the court familiar with these contracts?

22 THE COURT: I've read your memorandum and your
23 references in your memorandum to the contracts have been
24 read. And I've read the opposing parties' response and your
25 reply.

1 MS. MAW: Okay. Well then I'll make it fairly
2 brief since the court has had an opportunity to review this.

3 Basically if you look at the agreements the ones
4 at issue here, the major ones were the marketing agreement,
5 the management agreement, the asset purchase agreement and
6 Chase's actual consent. If you look at all those agreements
7 with the exception of Chase's agreement they're all between
8 Landmark and Westcourt. Those are the parties to that
9 agreement. Chase just consents to it.

10 Chase initially loaned a large sum of money to
11 this refinery to get it up and running starting back in '90
12 and then back again in 1992. In 1993 the refinery closed and
13 Dick Means was appointed the plant manager at that time.

14 Subsequent to that in 1994 these agreements were
15 entered into and in part to avoid foreclosure, levy or any of
16 the other remedies that are available to Chase when they
17 can't get -- they have security interest in this property and
18 they can't rely on their loan and get reimbursement on their
19 loan.

20 So in lieu of doing that the decision was made
21 that Landmark would sell the assets to Westcourt Corporation
22 and Chase would then benefit from the sale of those assets.
23 That is clearly outlined in the marketing agreement.

24 THE COURT: Part of the assets.

25 MS. MAW: Part of the assets. They retained

1 some of them. Then they transferred assets. Then the assets
2 were for sale. Dick Means were appointed to make sure those
3 assets were kept in saleable condition so they could be sold.

4 In order to deal with the monies and the handling
5 of this in the course of the sales they created two bank
6 accounts that are reflected in Section 2.4 of that marketing
7 agreement, and that included the first one was a special
8 purpose account that was set up in Landmark's name -- from
9 Chase Manhattan Bank.

10 THE COURT: Which Chase had complete control
11 over.

12 MS. MAW: Well, Chase didn't have complete
13 control over it. They -- it was in Landmark's name. The
14 checks that were issued were Westcourt checks on it. Landmark
15 had consent in terms of -- not Landmark, I'm sorry, Chase
16 had consent. Westcourt would make a -- there was a second
17 account setup on Westcourt's account and that was to transfer
18 funds from the special purpose account, the deposit account
19 into the Westcourt account. And the purpose of the Westcourt
20 account was so they were able to as exclusive representative
21 for Landmark, they would be able to pay for the cost inherent
22 in the sale of the assets including employees' salaries.

23 THE COURT: Let me get this in my mind because
24 it has been a time since I read it. As I recall, when the
25 assets were sold it went into this account, the first account

1 you talked about.

2 MS. MAW: Correct.

3 THE COURT: The monies, proceeds, okay. And my
4 recollection was that Chase had control over that asset
5 account except that if there was a disagreement -- well, the
6 second bank account was the one that went in to pay the
7 operating costs. And that was funded out of the first account
8 and Chase and several other parties had to come to an
9 agreement as to how much to transfer from the first bank
10 account into the second bank account.

11 MS. MAW: Correct.

12 THE COURT: If there was a disagreement then it
13 went according to the average for the last two months, is
14 that right?

15 MS. MAW: That is correct.

16 THE COURT: Okay. And now the other thing I
17 recall specifically from the contract is that Chase had
18 control of that first account. You tell me it didn't but
19 I --

20 MS. MAW: Chase had control of that first
21 account.

22 THE COURT: Okay. All right. So I'm clear.
23 We're clear on that.

24 MS. MAW: Yeah, we're clear on that. It was --
25 it was clearly -- it was in Landmark's name but Chase was

1 the one who would authorize.

2 THE COURT: Sure.

3 MS. MAW: Or, you know, when Westcourt made its
4 demand to transfer the funds into the Westcourt account to
5 pay the bills for the sale of these assets.

6 THE COURT: All right.

7 MS. MAW: Okay. But even so the agreement if
8 there was a dispute as to what got transferred and what
9 didn't that was between Landmark, Westcourt and Chase to
10 resolve and the court is correct that they based it on if
11 there was a dispute the two months prior. What it leaves
12 essentially two months prior would make the determination if
13 there was a dispute as to the amount.

14 THE COURT: Landmark, Chase and Westcourt, the
15 three of them.

16 MS. MAW: The three of them.

17 THE COURT: So, again, the bank's involved in
18 that process.

19 MS. MAW: Well, the bank's involved in that --

20 THE COURT: If they said no they could stop a
21 particular amount from being transferred and then you'd have
22 to go to the default provisions which would say use the prior
23 two months average. In other words unless they said yes, no
24 money was coming out unless it was the average that we talked
25 about, is that right?

1 MS. MAW: That's correct.
2 THE COURT: Okay.
3 MS. MAW: In doing that. But that control over
4 their funds, over the monies from the assets is they had
5 security interests in all the equipment and everything on
6 their.
7 THE COURT: I understand. I understand.
8 MS. MAW: So that control does not evidence any
9 other relationship other than their lender.
10 THE COURT: I'm not contesting the matter with
11 you.
12 MS. MAW: Okay.
13 THE COURT: You said something that caused me to
14 think that my memory may have been different from what you
15 were saying.
16 MS. MAW: No.
17 THE COURT: So I wanted to make sure that we
18 were all right.
19 MS. MAW: No. No. The court is correct on that.
20 That's kind of one of the major provisions. That
21 seems to be one of the major provisions in dispute as to who
22 paid Dick Means' salary which then gave to the argument that
23 somehow there was an agency principal relationship between
24 Chase and Dick Means.
25 THE COURT: Yeah.

1 MS. MAW: But even prior before you reach that
2 issue you have to look at who was the representative here on
3 this site to facilitate the sale and that was Landmark
4 appointed Westcourt. Westcourt then had Dick Means to aid and
5 facilitate in the sale of these assets. There's no
6 relationship between Chase and Westcourt in this case at all.

7 THE COURT: But you do acknowledge that Means
8 was -- continued in that position at the insistence of
9 Chase.

10 MS. MAW: No, I do not. That's -- I don't
11 acknowledge that.

12 THE COURT: That's part of what you contest as
13 the facts, is that right?

14 MR. CUNDICK: That's correct, Your Honor.

15 MS. MAW: Okay. If you look at the agreement,
16 that marketing agreement, Landmark was going to produce Dick
17 Means if he was still employed with Landmark. Landmark
18 appointed Dick Means in 1993 to manage this plant, to
19 facilitate the closing, maintain the assets.

20 THE COURT: Okay.

21 MS. MAW: You know, for the subsequent sale of
22 these assets. But I don't know where that -- they've not
23 produced any evidence to say that Chase has any relationship.

24 THE COURT: Well.

25 MS. MAW: To Dick Means but at any rate if you

1 look at provision 5.4 in the contract that's entered into
2 between Landmark and Westcourt that specifically addresses
3 what the relationship is of these parties, and that provision
4 provides that Chase is -- I mean it is clear, it says that
5 Chase's only relationship was that as a lender.

6 I think the case law is clear on that issue that
7 this -- this segment where you have a lender who's trying to
8 recoup on the monies they'd loaned out, some millions and
9 millions of dollars on this refinery here with all the
10 security interests in it, because they had control over the
11 sale of the assets -- they don't control the sale of the
12 assets but the monies and how they're spent to facilitate
13 further sales, does not make them an employer, does not put
14 him in a principal agency relationship.

15 Under our law of principle agency with Dick Means
16 there has to be a meeting of the minds. There has to be an
17 intent to form that relationship. There has to be authority
18 given, and there is no documentation that evidences any
19 relationship, any authority given between Chase Manhattan
20 Bank and Dick Means in this case at all.

21 I believe that the documents are clear on their
22 face in this instance. I think that if the -- if the court is
23 concerned over the manner in which Dick Means was
24 compensated, if that becomes an issue I have spoken to him
25 and I'll be happy to produce his affidavit and he will

1 explain exactly the understanding that we've had, the two
2 purpose accounts that we had, and the transfer between the
3 accounts, and that his check was a Westcourt check. It was
4 on a Chase Manhattan Bank account but it was a Westcourt
5 check.

6 And that's the only relationship, the only piece
7 of evidence that plaintiff is relying on to keep Chase in
8 here. I think it would be a travesty of public policy to take
9 a lender who's lending millions and millions of dollars put
10 security interests and because they want to control the
11 monies from the sale of their assets to realize on their lien
12 which they never did realize on, and to protect their
13 security interests to then find some kind of an agency
14 relationship.

15 It's just not supported by Utah law. It's not
16 supported by law in any other jurisdiction.

17 THE COURT: You said that they didn't have any
18 control over the sale of the assets but indeed they did have
19 some control over the sale of the assets. And also the cost
20 of sales. They had to approve the sale of any asset that has
21 certain value, is that right?

22 MS. MAW: Well, they had to approve the sale to
23 have certain value but it was an unfettered discretion that
24 they had to do that.

25 THE COURT: What were the criteria then? If it

1 was an unfettered discretion what was the criteria?

2 MS. MAW: Well, you went into the -- in the
3 event they didn't approve the sale it couldn't be
4 unreasonably withheld but you go into the regular default
5 provisions in that contract.

6 THE COURT: What were the default -- I didn't
7 see any default provision with respect to what happens if the
8 -- if the owner wants to sell for a certain price and the
9 secured lender said, no, you can't. Just seemed to me that
10 they could say we can't sell.

11 MS. MAW: Well, I think the contract contains a
12 reasonable clause in there and there's an objection provision
13 in there as well.

14 THE COURT: So what you're saying is that they
15 -- the obligation of the secured party was to not withhold
16 permission unreasonably.

17 MS. MAW: Right. And also there's a dispute
18 resolution clause in paragraph 2.5 which concerns the sales.
19 That goes more to sales expenses or withdrawal.

20 THE COURT: Which they had to approve also.

21 MS. MAW: Well.

22 THE COURT: Initially if they didn't approve it
23 then you go into some process for resolving the dispute.

24 MS. MAW: Yeah, including putting it before
25 Coopers and Lybrand for resolution as well.

1 THE COURT: Yeah.

2 MS. MAW: The accounting firm. But this isn't
3 -- I mean the bank loans the money. They have security
4 interest. They have a right to look at their assets and
5 protect those assets.

6 THE COURT: I understand.

7 MS. MAW: Okay.

8 THE COURT: Okay. Who will be addressing the
9 issue.

10 MR. CUNDICK: Your Honor.

11 Your Honor, essentially the plaintiffs argument is
12 this and that is that there's one of two theories that we can
13 rely under. There's two basis by which to find Chase as a --
14 either a principal of Landmark or as a principal of Dick
15 Means. If we can show facts which would support a finding of
16 control of either of those two then Chase needs to stay in.

17 First one is that they were -- is the law is quite
18 clear that if they step over the line, if Chase steps over
19 the line from a lender to running the business of Landmark
20 then they lose the status of becoming a creditor and then
21 become the principal of the debtor.

22 That's set forth in the restatement of agency. And
23 we believe that the facts are sufficient to where a jury
24 could find that that amount of control was exerted and those
25 facts are stated forth in the memorandum which -- you've

1 discussed those issues with --

2 THE COURT: Some of them.

3 MR. CUNDICK: With counsel and I think they're
4 -- I think -- I think there are enough there to show that
5 there were control and that is -- I think the big one is that
6 there's a bank account.

7 There's a bank account that Chase setup in Chase's
8 bank. Chase is the one that signs the checks on that. Chase
9 is the one that approves everything. Any asset, major asset
10 that is sold out of the refinery they have the right to
11 object to and to nix the deal on. They have the right to
12 cancel the whole marketing agreement and management agreement
13 if they find a default.

14 Page 11 of Exhibit 10 to Chase's exhibits. Bottom
15 paragraph." If Westcourt defaults in the performance of any
16 of its material obligations hereunder or under the management
17 agreement," so the marketing agreement or the management
18 agreement," dated as the date hereof between Westcourt and
19 Landmark, then Landmark or Chase may give written notice to
20 Westcourt thereof. If such default is not corrected then it
21 can be terminated."

22 So they've retained the right to terminate the
23 agreement. They retained virtually the entire control over
24 the refinery, over the funds, over the assets that are going
25 out, over the marketing agreements and management agreements

1 which are the underlying basis of the relationship. They can
2 -- they have control over all of that. I think that is
3 sufficient to submit to a jury to show they have stepped over
4 the line, that they are no longer a lender but they have
5 become the principal of Landmark.

6 Secondly that Richard Means was the agent of
7 Chase. This is from Richard Means' deposition.

8 Answer. " Originally I was to stay as a Landmark
9 employee. Westcourt said they didn't want to keep me that way
10 because they had to keep two payrolls and it was an extra
11 expense. So Chase Manhattan agreed to put me on the
12 Westcourt payroll because Chase was actually paying my wages.
13 Westcourt was paying my wages but Chase was reimbursing
14 Westcourt for my expenses, for my salary."

15 So what we had was any monies that were collected
16 went into this Chase account, okay? And then Chase would put
17 -- send over the expenses to reimburse Westcourt, and then
18 whatever was remaining was Chase's.

19 So in the -- essentially, yes, Chase was paying
20 the salary of Dick Means because they chose to allow that to
21 be an expense to ship over to Westcourt. If they wanted
22 to --.

23 THE COURT: Well, if an expense they're not
24 paying. I mean that wouldn't be a credit against the loan,
25 would it? Let me put this in --.

1 MR. CUNDICK: Well, it would be a credit against
2 the loan. It would have been a credit against the loan but
3 for they wanted Dick Means to stay on the property to keep
4 the assets in a saleable condition. Chase did. So it was a
5 -- by paying -- by paying Dick Means, insisting that he be
6 on Westcourt's salary it ended up to be a net against the
7 loan.

8 THE COURT: Okay. Because less --

9 MR. CUNDICK: Less --

10 THE COURT: Might otherwise be available.

11 MR. CUNDICK: Exactly. And Dick Means --

12 THE COURT: That assumes that the loan's never
13 paid. If it was paid then it's not an expense.

14 MR. CUNDICK: Exactly. Thank you.

15 And I think it's clear that it was Dick Means
16 responsibility to keep the assets saleable. That was the
17 authority that Chase gave to Dick Means. That's where the
18 agency between Chase and Dick Means is created in that they
19 wanted him to work there and they wanted him to work there
20 because they wanted to give him the authority to keep the
21 assets in a saleable condition.

22 So I think clearly there is evidence by which a
23 jury can find that Dick Means was the agent of Chase
24 Manhattan. And if he was the agent of Chase Manhattan
25 there's the theory of liability.

1 Same with the previous argument, that is, that
2 Chase was the principal of Landmark because they stepped over
3 the line. There's sufficient evidence on both those issues to
4 submit to a jury by which they could come to that conclusion.

5 And I would submit it on that, Your Honor. If you
6 have any questions.

7 THE COURT: I do. And I didn't mention I read --
8 I don't know if I read all of the cases. I don't think I did
9 but I read your cases on -- on situation where a lender had
10 been found to be a -- an agent. Or that the --

11 MR. CUNDICK: Where the lender had been found to
12 be a principal?

13 THE COURT: A principal, yes. And one was an
14 apartment situation in New York, as I recall, or someplace
15 like that.

16 MR. CUNDICK: Right. Right.

17 THE COURT: But it seemed to me that these were
18 ongoing businesses and so when you made the statement, you
19 said that they have got so far into the business that they
20 stepped over the line in running the business, it caused me
21 to wonder what business was being run.

22 MR. CUNDICK: The business was the liquidation
23 of the assets. That's -- I think that's --

24 THE COURT: Isn't the secured party entitled to
25 be deeply involved in how assets they have security interest

1 in are disposed of?

2 MR. CUNDICK: I -- no doubt that they have the
3 right to be deeply involved in that but they still have the
4 -- the law that states if you then -- if you step over the
5 line of being deeply involved and start running the business
6 of the debtor then you become the principal of the debtor.

7 THE COURT: Well, that gets me back to the issue
8 of how they were running the business and --

9 MR. CUNDICK: And my answer is they were running
10 the business because they were the ones that were -- the
11 business -- the entire business of Landmark at that point was
12 liquidation. That was their business. Selling off their
13 assets. That is carrying on business and Chase was the one
14 that was doing that. They were running the business for
15 Landmark.

16 THE COURT: There were two contracts, one of
17 them in essence dealt with how the property would be disposed
18 of, and the other one talked about the management of the
19 assets to retain their value until the assets could be sold.

20 The management aspect of that, how was Chase
21 involved in the daily operation or management of the
22 company? I couldn't see anything in what you brought to the
23 court's attention other than what you talked about in terms
24 of what would happen if assets were sold where you allege
25 that they were involved in managing that operation.

1 MR. CUNDICK: As far as the day-to-day
2 operations the connection -- the nexus would be that Chase
3 was the one that -- I'm sorry. Let me gather my thoughts.

4 The nexus is that Chase had Dick Means, their
5 agent, working there because they wanted to keep the assets
6 in saleable condition.

7 Your Honor, if -- could I allow Mr. Freestone to
8 address the court?

9 THE COURT: Sure. Mr. Freestone.

10 MR. FREESTONE: Thank you, Your Honor. One
11 thing that I thought of, if the bank actually engages in
12 liquidation of an asset they are actually the principal that
13 hires an agent in order to liquidate that asset. That's their
14 business. And that's what they're doing here is actually
15 hiring Westcourt to liquidate this asset.

16 THE COURT: So what you're saying is if they
17 would have taken over and exercised their rights and security
18 interest and then this would have happened there wouldn't be
19 an issue. They would be on the line because they would have
20 had control over it.

21 MR. FREESTONE: Exactly.

22 MR. CUNDICK: Thank you, Your Honor.

23 THE COURT: I'm still trying to think in my own
24 mind and as I thought this through I said it seemed to me
25 that what they were concerned with is not necessarily find a

1 operating the refinery. Westcourt didn't want him. Chase
2 demanded that he be there. Their guy is on the site. Okay?

3 They've got control over all the expenses that are
4 paid because they've got veto power over it. They've got
5 control over the sales in excess of two hundred fifty
6 thousand dollars. They've got veto over that and I understand
7 there's really some more involved.

8 So they've got control over every aspect of that
9 business and they're -- in addition they're communicating
10 with Richard Means. He testified in his deposition that he
11 was talking --" the last person I talked to was Nat
12 Worstenstein. He was representing Chase."

13 THE COURT: That's not in your memo.

14 MR. CUNDICK: No, it's not.

15 THE COURT: You can't bring that up now.

16 MR. CUNDICK: Okay. I apologize for that.

17 THE COURT: Okay.

18 MR. CUNDICK: It seemed like there were a few
19 things that were being brought up that weren't actually in
20 memos.

21 THE COURT: And that was really a question I had
22 when I went through it. Just seemed to me that it's one thing
23 for a secured party to put their person in and in control.
24 It's another thing to say I insist upon having somebody there
25 that will control. In the first instance you're involved in

1 the control of it. In the second instance you're just putting
2 somebody there who will control it and you're not exercising
3 any control over it.

4 I didn't see anything in your memorandum that
5 said, look, they exercised control over the operation of that
6 thing. You said that they were paying for him but you didn't
7 say that he operated under their control.

8 MR. CUNDICK: I think they are because they're
9 paying his salary and he testified that they were paying his
10 salary. I think that is control.

11 THE COURT: So, that in and of itself is enough
12 to say that there's an agency if you pay the salary.

13 MR. CUNDICK: I believe so.

14 THE COURT: Okay.

15 MR. CUNDICK: That in addition to the admission
16 that he was there to keep the assets in a saleable condition.
17 He was -- he was --

18 THE COURT: Arguably isn't he working for
19 everybody on that? I mean, doesn't the owner -- doesn't the
20 owner benefit for somebody if somebody's there keeping the
21 asset in saleable condition?

22 MR. CUNDICK: The owner, Landmark, has virtually
23 no connection with the business at this point. The only
24 connection with the business of liquidation or the assets are
25 Westcourt and Chase. Westcourt's interest is they get a

1 commission off what they sell.

2 THE COURT: Sure. Sure. And doesn't Landmark
3 benefit if somebody keeps the assets so that they're not
4 going down in value?

5 MR. CUNDICK: They benefit because -- yes.

6 THE COURT: Because their debt will be less.

7 MR. CUNDICK: Debt will be less. But the real
8 beneficiary in all of this is Chase. Chase is the one --
9 Westcourt's benefit is a commission. Landmark's not got any
10 control over this at all at this point anyway. The one that
11 has control and the one that's getting the benefit is Chase.

12 THE COURT: All right. Thank you. Anything
13 further from you?

14 MS. MAW: I just want to point out first of all
15 Dick Means' testimony doesn't come in unless the court
16 determines the contracts are ambiguous because of parole
17 evidence rule would prevent that from coming in.

18 The second thing --

19 THE COURT: Let me stop you there. You're here
20 on the motion for summary judgment.

21 MS. MAW: Correct.

22 THE COURT: And I think it's perfectly -- I
23 understand what you're saying. You're saying I've got a
24 bunch of contracts here and the rules of interpretation for
25 contract provide that you don't get parole unless it's

1 ambiguous. But there maybe a situation where the contract is
2 perfectly clear and there's no ambiguity but the parties are
3 acting differently from the contract. And so you can't
4 preclude them from bringing forth their evidence on how the
5 parties actually acted by saying what the contract, the
6 contract, the contract.

7 So I'm not -- I'm not interested in whether or
8 not it's ambiguous for purposes of interpreting the contract
9 I would. I would be interested but this isn't really an issue
10 of contract interpretation. It's an issue of whether or not
11 there's an agency relationship outside the contract perhaps
12 which is brought into effect through the party's conduct.
13 You see what I'm saying?

14 MS. MAW: Yes.

15 THE COURT: Okay. So I've heard you say that
16 several times. We're bound by the contract and I don't
17 believe it. I don't believe we are bound by the contract. I
18 think we're -- the contract's interesting and I read it and I
19 think that there's some things to be learned from the
20 contract but if the parties act different from the contract
21 then I have to look at that also for purposes of this motion
22 at least.

23 MS. MAW: I understand that but under Utah law
24 of agency principles you don't have the evidence here. You
25 don't have the meeting of the minds. You don't have the

1 consent. You don't have the apparent implied authority on
2 Dick Means.

3 They're making -- Dick Means was in that position
4 long before the agreements were entered into. Dick Means may
5 or may not have worked for Westcourt depending -- I mean the
6 contract if he was an employee of Landmark, if Landmark
7 couldn't produce Dick Means as an employee to Westcourt there
8 is no -- there is no agreement there is nothing that creates
9 a relationship between Chase and Dick Means.

10 To import duties between the two Chase was a
11 lender, an absentee lender. Chase never realized anything on
12 their means. I think they got maybe 50,000 out of this.

13 You don't have the apparent implied authority on
14 Dick Means. They're making -- Dick Means was in that
15 position long before the agreements were entered into. Dick
16 Means may or may not have worked for Westcourt depending --
17 I mean the contract if he was an employee of Landmark, if
18 Landmark couldn't produce Dick Means as an employee of
19 Westcourt. There is no -- there is no agreement. There is
20 nothing that creates a relationship between Chase and Dick
21 Means. To import duties between the two Chase was a lender,
22 an absentee lender. Chase never realized anything on their
23 millions. I think they got maybe 50,000 out of this whole
24 thing.

25 Also if you look at the cash sweep where they have

1 that defined in the contract Chase didn't get anything until
2 there were excess proceeds, and then they were applied to the
3 Chase claim. So they were -- this was not a deal where they
4 were going to make all this money on these assets. All this
5 was was in lieu of foreclosure. That's what they wanted to
6 do. They didn't want to have to foreclose because they'd
7 probably get nothing if they threw the refinery into
8 bankruptcy.

9 So that was the whole purpose behind this. There
10 is no agency relationship. The cases they cite out of the
11 other states even say that a lender has a right to consent
12 when its money is at issue and that's the position we're
13 going to take. They have not shown any facts to show we had
14 any control over the daily operations or management. To the
15 contrary, Westcourt did.

16 THE COURT: Okay. Let me clarify that last issue
17 then we'll get on with this. You made a statement, Mr.
18 Cundick, that everything in this account if they didn't send
19 it over to the second account all went into Chase but that's
20 really not what happened. As I understand that account was to
21 exist until the process was to wind up and at that point in
22 time if there was excess it would go back to -- into Chase's
23 account to apply against the loan. Am I correct in that?

24 MR. CUNDICK: Yes, Your Honor.

25 THE COURT: Okay. All right. Anything further?

1 The matter's submitted?

2 There are some clean up issues that we need to
3 talk about. The plaintiffs conceded that there was no issue
4 as to being an employee of an independent contractor, and
5 there was -- the plaintiff's conceded on the issue of
6 corporate veil and also that no liability arises based upon
7 the ownership of the stock. And that was in the pleadings and
8 so summary judgment will be issued on those -- on those
9 issues.

10 It hasn't been further argued here but there was
11 some allegation that there was liability based upon Chase
12 having actual possession of the refinery. Actually the
13 response from the plaintiff to the motion filed by Chase
14 pretty much gave that up I thought in that they said -- they
15 acknowledged that Chase did not have actual possession of the
16 refinery. And so whatever liability with respect to ownership
17 would have to be tied in -- it wouldn't be direct
18 responsibility. It would have to be tied in to their agency
19 principals.

20 But based upon direct liability the court will
21 grant summary judgment on that issue.

22 Now, we have two issues based upon the issue of
23 agency principals. First was that Means was an employee of
24 Chase who was acting under his direction and we've talked
25 about that. The one issue that I think is kind of out there

1 but I'm going to accept in the light most favorable to the
2 plaintiff was that Chase was being -- was -- you read that
3 part of the deposition again that Chase had insisted that
4 Means be there. And that Mr. Means' salary was being paid out
5 of the operating expenses.

6 Paragraph three of your memorandum, plaintiff's
7 memorandum, asserted that Chase exerted much control and
8 exercised virtually all the decision making power and then
9 referred the court to Exhibit 10 for authority, and I have
10 read Exhibit Number 10. But when the plaintiff referred the
11 court to that document for authority they did not specify
12 what part of the document they were looking at.

13 I am obligated to read that document and I don't
14 -- I'm not obligated to accept the Plaintiff's
15 characterization and submissions providing virtually all
16 decision making power with respect to the refinery in Chase.
17 In fact it doesn't. It doesn't do that.

18 The court also notes that page 5, paragraph H, of
19 plaintiff's memorandum indicates that Chase had a veto power
20 over the monthly expenses. We've talked about that. Actually
21 Chase didn't have a veto power. They had the power to agree
22 or disagree. If they disagreed it went back or fall back to
23 the position where the average of the previous two months
24 expense was used.

25 Although the various documents and statements and

1 records do demonstrate that Chase exercised some control over
2 the sale of the assets, I don't think that anything that
3 Chase did here was unusual in view of Chase's position as a
4 lien holder, and I think that a lien holder has a legitimate
5 interest in approving sales of secured assets. Otherwise
6 assets just disappear.

7 And the fact that Mr. Means continued to be
8 employed at the insistence of Chase and that Chase indirectly
9 -- well, I don't want to say they paid their wages. The way
10 I understand it is the way we talked about. Those wages came
11 out of the approved monthly expenses. The fact that those
12 wages came out of the approved monthly expenses doesn't
13 necessarily indicate agency.

14 I would have been more interested in what the
15 plaintiff may have said as to control outside of the process
16 of -- of locating buyers and arranging for sales and I didn't
17 see any allegation that Chase took any part in the daily
18 management of the company as to how the job was done.

19 And as I indicate I don't think that having Means
20 there and even if Chase insisted that somebody be there to
21 oversee this it doesn't indicate an agency relationship
22 unless Chase exercised some actual control over those things,
23 and I don't see that they did.

24 So I'm going to deny -- I'm going to grant your
25 motion for summary judgment as to the issue of agency as it

1 relates to Mr. Means and kind of for the same issues the
2 plaintiff alleges that Chase was a principal of Landmark.
3 Again, there isn't really anything outside of what I think
4 the -- a secured party is entitled to do to secure their
5 interest in the property to maintain control over that.
6 Plaintiff maintains that Chase had control over the refinery,
7 was therefore liable for the acts of Landmark in connection
8 with the refinery including, incidently, a breach of duty to
9 an invitee on the premises.

10 I don't think that there's anything unusual that
11 happened or that was outside the usual conduct for reasonable
12 secured party under the circumstances. Control over the -- by
13 the creditor over proceeds of the sale is almost always
14 required and creditors should not be required to release
15 their security interest as a result of a sale unless there is
16 an appropriate amount taken as a result of that sale.

17 If it were otherwise, that is if the debt -- if
18 the secured party didn't have anything to say about these
19 things fraud could be perpetrated on the secured party by
20 just selling the assets for a nominal amount and certainly
21 against that prospect that Chase had a legitimate interest in
22 being there.

23 I think that there is -- Ms. Maw indicated that
24 there is a strong public policy in allowing secured parties
25 to take reasonable steps to ascertain value in their security

1 interest and also be involved in how those assets are
2 disposed of. Nothing in the record indicates that Chase had
3 crossed the line.

4 So I'm going to grant your motion as to that. So
5 your motion for summary judgment is granted. Okay.

6 MS. MAW: Would you like me to prepare the
7 order?

8 THE COURT: I don't think they will. Would you
9 do that? Submit it to parties. Does that take care of
10 everything for today?

11 MR. CUNDICK: Yes, Your Honor.

12 THE COURT: Okay. Thank you.

13 (Whereupon, court was held in recess at 3:15.)
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1 STATE OF UTAH)

2 : ss

3 COUNTY OF SALT LAKE)

4 I, PAMELA C. SMITH, Certified Shorthand Reporter,
5 Registered Merit Reporter and Notary Public within and for
6 the County of Salt Lake, State of Utah, do hereby certify:

7 That I was NOT present at the foregoing court
8 proceedings;.

9 That the foregoing record was preserved by
10 videotape;.

11 That thereafter, I stenographically recorded the
12 requested portion of the video and translated the same using
13 computer-aided transcription, followed by a proofreading
14 against the video.

15 That the foregoing pages contain to the best of my
16 ability a full, true and correct transcript of the same.

17 In witness whereof, I have subscribed my name and
18 affixed my seal this ____ day of _____, 2001.

19

20

21 PAMELA C. SMITH, C.S.R., R.M.R.
22 Notary Public

23

24

My Commission Expires:

25

_____.

Tab L

COPY

EIGHTH DISTRICT COURT - VERNAL

UINTAH COUNTY, STATE OF UTAH

JOHN MECHAM,)

Plaintiff,))

vs.)

Case Number 960800543

BAND-IT IDEX, INC.,)

Defendant.)

BEFORE THE HONORABLE A. LYNN PAYNE

February 29, 2000

2:00 P.M.

TRANSCRIPT OF VIDEO TAPE RECORDING OF MOTION HEARING

Transcribed by:
Pam Smith, CSR, RMR
3454 Creek Road
Salt Lake City, Utah 84121
(801) 942-6430

1 APPEARANCE OF COUNSEL:

2 For the Plaintiff:

DAVID C. CUNDICK
& WAYNE A. FREESTONE
Parker, Freestone & Angerhofer
Crescent Square, #13
11075 South State Street
Sandy, Utah 84070

5

6 For the Defendants
Portfield Investments,
Fruita and Westcourt:

KEVIN D. SWENSON
Strong & Hanni
9 Exchange Place, #600
Salt Lake City, Utah 84111

8

9 For Consolidated Oil
and Transportation Company,
Inc.:

CLARK ALLRED
McKeachnie, Allred & McClellan
121 W. Main Street
Vernal, Utah 84078

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1 FEBRUARY 29, 2000, VERNAL, UTAH

2 PROCEEDINGS.

3 THE COURT: Could I ask you to make your
4 appearances since I'm really old and don't remember
5 everything I should remember.

6 MR. SWENSON: Kevin Swenson representing
7 Portfield Investments, Fruita and Westcourt.

8 THE COURT: All right. So you'll be
9 participating on the motion for summary judgment.

10 MR. SWENSON: That's correct.

11 THE COURT: Mr. Allred, I do recognize you.

12 MR. ALLRED: I represent Consolidated Oil and
13 Transportation Company, Inc.

14 THE COURT: Okay. Thank you.

15 MR. CUNDICK: Your Honor, Dave Cundick and Wayne
16 Freestone representing the plaintiff.

17 THE COURT: All right. Do any of you have any
18 preference as to which we take first?

19 MR. ALLRED: I'd suggest the motion for summary
20 judgment. Mr. McClellan who assisted me on this I think was
21 hoping to be here so perhaps -- I don't know. It turns out
22 he had to go to Roosevelt. (Inaudible.)

23 THE COURT: Okay. Mr. Swenson. The record
24 indicate that I've received this morning your reply.

25 MR. SWENSON: All right.

1 THE COURT: And I've read all of the motions.

2 MR. SWENSON: All right.

3 THE COURT: And the pleadings with respect to
4 your motion for summary judgment.

5 MR. SWENSON: Okay. This is a 1996 lawsuit. This
6 is a case that has been around for awhile and quite a bit of
7 discovery has been completed in the case. The facts giving
8 rise to the lawsuit occurred on February 27, 1995, in an oil
9 field or an oil refinery in Fruita, Colorado. The plaintiff
10 sued, among others, Fruita Marketing & Management for
11 negligence.

12 And part of the discovery is we have identified
13 all the witnesses, expert witnesses that will be used in the
14 case. The plaintiff's only expert witness is a gentleman by
15 the name of Don Stinson, and he is the only expert who will
16 talk at all about liability. And we have had the opportunity
17 to depose Mr. Stinson a couple of times to get it finished
18 and this basically comes down to the plaintiffs cannot prove
19 that Fruita had any involvement in the case.

20 Don Stinson, again, their only liability expert
21 was asked what the -- they've defined as property owner
22 defendants which includes Fruita and others. Did -- that in
23 any way caused or contributed to the accident, and he
24 responded that there were two things that they did. The first
25 one was that the wrong oil was provided to Mr. Mecham. And

1 second thing is that Mr. Mecham was instructed to park or
2 hook up to the battery head in the wrong location.

3 And for purposes of this motion today we don't
4 intend to get into whether or not those things were right or
5 wrong. We do expect that those will come up later.

6 Mr. Stinson was asked several times after that if
7 there was anything else that they did and he said no. Those
8 are the two things that the property owner defendants did.

9 So we started taking a look at this and it's clear
10 that the two areas where he claims that there's fault Fruita
11 had no involvement with either of those areas. The oil that
12 was provided was provided to the plaintiff by Mr. Means,
13 Richard Means. He was an employee of Landmark and then became
14 part of the Westcourt payroll. He provided to the -- he
15 provided the oil to the plaintiff.

16 Plaintiff knew what kind of oil it was and
17 approved of using it, and whether it's the wrong oil or not I
18 again mentioned we're not going to get into that today. But
19 Means was not an employee or an agent of Fruita and the
20 evidence in the case is clear. Mr. Means has been deposed.
21 Several others have been deposed. He was a Landmark employee
22 who was then put on the Westcourt payroll to keep him
23 functioning to clean up the refinery is basically what
24 they're doing.

25 This refinery went out of business in 1993 and now

1 they're just trying to keep it clean enough that they can
2 sell the parts off.

3 Landmark went out of business. And there were a
4 couple of contracts entered into with Westcourt to manage the
5 property and then a contract with Fruita to sell the property
6 off. To market whatever property they could get rid of.

7 Mr. Means when he was deposed indicated he was not
8 an employee of Fruita. The plaintiff, however, argues that
9 Mr. Means is an agent of Fruita. They acknowledge in their
10 brief that he's not an employee, and then they skip ahead and
11 say but he is an agent. No support. No backup of any kind.

12 The only argument that they have raised is that
13 Fruita had some involvement on the property. And Fruita did
14 have, like I said based on the contract, the authority to
15 market all of the property that was left there that they
16 could sell. And they were doing that with, you know, several
17 agreements between Westcourt, Fruita, Chase Manhattan and
18 Landmark to try to clear up this property.

19 But the oil that was provided was not owned by
20 Fruita. The property where the incident occurred was not
21 owned by Fruita. Dick Means has testified that he was not an
22 employee of Fruita or was not acting on Fruita's behalf. The
23 deal came down between Consolidated Oil, who owned part of
24 the oil in the tank, and Landmark who owned part of the oil
25 in the tank, and they had requested that -- or Consolidated

1 had bought that oil. The oil wasn't able to come out of the
2 tank because it was so heavy.

3 They brought in Adler Hot Oil which is the
4 employer of the plaintiff. And the purpose of that was to
5 heat that tank and get circulation going so they could bring
6 that oil out and then sell it.

7 But, again, Fruita had no -- no involvement with
8 that oil. They were not involved in the sale of that oil.
9 They were not involved in the discussions as to how that
10 would be brought out of the refinery, who it would be sold
11 to, anything to do with Consolidated Oil.

12 The second issue is where they -- where he was
13 instructed -- where the plaintiff was instructed to park.
14 And, again, that becomes an issue of was Mr. Means an agent
15 for Fruita. And there's no testimony at all that the
16 plaintiffs can point to, and it's not because we haven't had
17 time. Like I said, this is a 1996 case. Mr. Means has been
18 deposed. Several other people have been deposed and nobody
19 has indicated that in any way Dick Means is an agent for
20 Fruita. There's no documentation that indicates that Dick
21 Means is an agent for Fruita.

22 This is simply a case where the plaintiffs cannot
23 make any showing of agency. And without that showing the two
24 issues that their expert has claimed we were at fault in or
25 the property owners were at fault in do not go to Fruita. And

1 because of that and the lack of evidence that the plaintiffs
2 have -- have we would move for summary judgment.

3 THE COURT: Thank you, Mr. Swenson.
4 Who will speak for the plaintiff?

5 MR. FREESTONE: Wayne Freestone, Your Honor.

6 THE COURT: Mr. Freestone.

7 MR. FREESTONE: Your Honor, to cut right to the
8 chase, the -- the relationship between Fruita and Westcourt
9 is pretty muddled at least. As we set forth in our response
10 the marketing agreement that was entered into by the property
11 owner, Landmark, and Fruita, specifically has or mentions
12 that Fruita's to be referred to as Westcourt. The same thing
13 with the management agreement.

14 You know, I set forth the language in there. And
15 in fact Mr. Swenson in his own words as he was addressing the
16 court said that there was a contract between Landmark and
17 Westcourt to manage the property. If in fact Westcourt was
18 managing the property we know Fruita was managing the
19 property because we have waivers that were being signed that
20 the court has already -- we've already discussed in court
21 before. A waiver that Mr. Mecham was required to sign that
22 said that Fruita was the one that was managing the property.

23 Obviously Westcourt was involved in managing the
24 property because Mr. Means who, granted, was on Westcourt's
25 payroll, was there and facilitating the extraction of the oil

1 at the time.

2 It appears from the documentation from the
3 contracts that for purposes of the contracts and it appears
4 from their own practice that Fruita and Westcourt were acting
5 as the same. Whether they were acting as the same or not our
6 expert testifies that there was a duty on the part of Fruita
7 who was managing the refinery to make sure that there was
8 someone there who could facilitate the extraction of that oil
9 in a safe manner.

10 There was a duty on the part of the company that
11 was managing the refinery to make sure that that was done
12 properly. And that duty was breached. Consequently, we have
13 Fruita and to the extent that Westcourt was involved in
14 management of the property as well who breached a duty
15 according to our expert, and consequently there's negligence
16 there. There's at least a question that needs to be
17 presented, a question of fact as to whether or not there's
18 actually an agency relationship there. On its face according
19 to these documents there is. On its face they're one in the
20 same.

21 THE COURT: Thank you.

22 MR. FREESTONE: That's it, Your Honor.

23 THE COURT: Anything more from you, Mr.
24 Swenson?

25 MR. SWENSON: Let me just point out quickly, he

1 says they're one in the same yet they've sued two different
2 entities. I mean it's clear that they're two separate
3 entities. Westcourt is a Colorado corporation. Fruita is a
4 Delaware corporation. They're two separate entities. They've
5 known that from the beginning when they filed the lawsuit and
6 yet they've still presented absolutely no evidence of agency
7 other than to say, well, it's kind of muddled and there may
8 be agency.

9 There's no showing of agency that -- the testimony
10 is clear that Dick Means was working as an employee of
11 Westcourt and not of Fruita and had no relationship with
12 Fruita.

13 THE COURT: I knew I was going to do that. I
14 would like to ask you a couple of questions, Mr. Swenson.

15 MR. SWENSON: Sure.

16 THE COURT: Let me indicate to you that my
17 feeling is that this is a matter where there are lots of
18 issues which are yet to be resolved and I cannot issue an
19 order of summary judgment because the issue of agency's not
20 clear. The contract that Fruita signed where they themselves,
21 I mean they were acting in a capacity of a contracting party
22 and referred to themselves in that contract as Westcourt.
23 Doesn't that by itself create an issue as to agency that
24 can't be resolved through a motion for summary judgment.

25 If I have a party that says A, B, C, bracket D, if

1 Fruita is referring to themselves as Westcourt shouldn't they
2 be allowed the opportunity to -- to use that as evidence that
3 at least goes to the issue of whether or not Westcourt and
4 Fruita are the same?

5 MR. SWENSON: No, I don't think so because what
6 the specific acts that they're talking about are the acts of
7 one employee and there is no showing that that employee has
8 any relationship to Fruita. We're not saying that Fruita
9 doesn't have the role in the refinery. What we're saying is
10 that role in the refinery has nothing to do with anything
11 that they have said caused or contributed to the accident.

12 THE COURT: You haven't got to what I want you
13 to address. If Fruita is referring to themselves as
14 Westcourt, can't they do the same thing? I mean that's
15 something that Fruita themselves did. If it's a problem that
16 was created it was created by them, and I think that that
17 creates a problem of whether or not there is an agency
18 relationship because they're referring to themselves in a
19 contract under two names, both Fruita and Westcourt, and
20 according to what you've told me Mr. Means is an employee of
21 one.

22 If those two have either an agency or a
23 relationship or they are the same entity in fact that
24 confusion can only -- is only apparent because of what they
25 themselves did by referring -- referring to themselves as

1 Westcourt. My way of thinking about it.

2 MR. SWENSON: Okay. Well, they referred to
3 themselves as Westcourt but there's a separate company that
4 is Westcourt Management, Inc., which is a separate
5 corporation. I don't see the reference to Westcourt as
6 muddying that.

7 THE COURT: Is -- is there three entities here?
8 Is there a Westcourt Management and a Westcourt and Fruita or
9 is there just two corporations here?

10 MR. SWENSON: There are several Westcourt
11 entities.

12 THE COURT: Involved on the property there in
13 Colorado?

14 MR. SWENSON: Yes. And they're separate from
15 Westcourt, Westcourt Management, Inc., which is kind of the
16 parent holding company. Westcourt Labs and several other
17 parts, Westcourt Marketing.

18 THE COURT: Okay. Well, I'm ready to rule unless
19 you have -- the motion I think needs to be denied, will be
20 denied based primarily upon the reasons that I've already
21 indicated.

22 It's your obligation with respect to a motion for
23 summary judgment to convince me that there is no material
24 issue of fact and the defendant or the moving party is
25 entitled to a judgment as a matter of law.

1 When I went through this, looked to me like there
2 was a real fact issue in view of the fact that we have Mr.
3 Means passing out the waiver of liability at the gate, the
4 Westcourt employee seeking to insulate Fruita from liability.
5 In view of the fact that Mr. Means provided the oil, and
6 that's part of the record. That's in dispute.

7 MR. SWENSON: Your Honor, you mentioned Mr.
8 Means handing out the liability release.

9 THE COURT: Well, somebody was there.

10 MR. SWENSON: Yeah, there's a private security
11 company that's there. Has nothing to do with Mr. Means.

12 THE COURT: Okay.

13 MR. SWENSON: All right.

14 THE COURT: The issue rather is whether or not
15 Means is an agent of Fruita and I'm not convinced that you've
16 -- it's not clear enough in my mind that I feel like they
17 shouldn't have their chance.

18 You brought up something that really hadn't been
19 brought up to me that there's several Westcourts but that
20 wasn't part of what I saw anywhere in your pleadings. And
21 based upon the fact that at least Mr. Means is a person who's
22 alleged to have done a couple of things that led to the
23 liability, and based upon the fact that he was an employee of
24 a Westcourt, I don't think -- you really haven't put me in a
25 position where I feel like I can issue -- can grant a motion

1 for summary judgment.

2 I think the issue is open based upon the fact that
3 Fruita Management is referring to themselves as Westcourt.
4 And if you've got something more, then convince me that there
5 are two or three Westcourts, this is a different one, I guess
6 I'd be glad to do it. Sorry. Motion is denied.

7 The other motion -- are you resolved, Mr. Sam, on
8 your issue?

9 MR. SAM: There's an issue that (Inaudible.)

10 THE COURT: We'll wait until we've taken care of
11 these folks then. That's fine.

12 Mr. Allred.

13 MR. ALLRED: Thank you, Your Honor. I indicated
14 I represent Consolidated Oil and Transportation Company,
15 Inc., an entity served the latter part of December of 1999.
16 Apparently this case had been going on for several years.

17 Our motion is to dismiss this defendant now for
18 lack of jurisdiction in the State of Utah. The pleadings --
19 and there's also an affidavit we submitted indicate the
20 accident occurred in Colorado, in Fruita, Colorado, was on a
21 refinery and real property in the State of Colorado. The
22 product and conduct alleged to have caused liability for
23 Consolidated Oil all occurred in Colorado. The injury to the
24 plaintiff and his damages occurred in Colorado and
25 Consolidated Oil is a Colorado corporation with its offices

1 in Colorado and its employees and everything there.

2 Based on that we fail to see anything that would
3 provide State of Utah jurisdiction over this particular
4 defendant. We've gone into extensive discussion in our
5 memorandums. Some case law and I will -- this court indicates
6 it's read so rather than go through that I'm going to just
7 touch briefly on the issues.

8 THE COURT: I've read the pleadings and I think
9 I only read two or three cases. I read the one you kept
10 referring to. The old federal case that you -- .

11 MR. CUNDICK: (Inaudible).

12 THE COURT: Yes. But I'd like when you talk to
13 me to distinguish -- you never referred to Mr. Allred's case
14 which I thought may be dispositive. So I'd like you to --
15 I'd like you to in your discussions with me when you get an
16 opportunity whoever is going to present that -- it wasn't
17 done in the pleadings. And I was surprised that I didn't have
18 any reference in the pleadings to Arguello versus Industrial
19 Woodworking Machine Company, and I have read those two cases
20 at least.

21 MR. ALLRED: Well, in summary state can claim
22 jurisdiction over a defendant, an out of state defendant, a
23 nonresident defendant under one of two areas, either specific
24 jurisdiction or general jurisdiction.

25 Specific jurisdiction generally is tied to Utah

1 Code Annotated 78-27-24 which says that if the injury arises
2 out of some specific acts enumerated therein then you claim
3 jurisdiction.

4 Basically what -- to claim jurisdiction you've
5 got to show that an act occurred in the State of Utah that
6 gave rise to the injury or to the cause of action and that
7 also there's a requirement of significant mental contact.

8 In this case the accident, the injury, everything
9 was in Colorado. Doesn't seem to be any basis to be claiming
10 specific jurisdiction. So that gets you to the general
11 jurisdiction issue, and in that the plaintiff has to show the
12 defendant conducted substantial continuous local activity in
13 the state. That's language out of Arguello and Nuway case and
14 several others.

15 There's a case we didn't cite called Bundadick,
16 something like that -- actually it's fact for the court to
17 look at in determining that -- suggesting that you look at
18 whether the defendant engaged in business in the state, was
19 licensed in the state, owned property in the state,
20 maintained employees, agents, bank accounts in the state, had
21 shareholders residing in the state, had phone listing in the
22 state, advertised in the state, traveled to the state, paid
23 taxes, recruited employees, or created a substantial
24 percentage of national sales income in the state. That fact
25 is Bundadick versus State Line Hotel case looked at.

1 Really the only contact it appears that the
2 general manner that Consolidated has in the State of Utah
3 that's been addressed by the plaintiffs, one is set forth in
4 an affidavit is that occasionally Consolidated would make
5 spot sales in the sale of petroleum products.

6 The other is an argument they made that somehow a
7 web site creates jurisdiction in the state. Neither of those
8 come anywhere near the conduct and substantial continuous
9 local activity in the state that's required to have Jones
10 jurisdiction. The case on the web site versus federal, once
11 we refer to those in general they say that by just common
12 informational type web site does not give general
13 jurisdiction. That's really what this web site was was
14 information about the company, the numbers you could contact
15 if you were interested in their products.

16 Spot sales are unrelated to the injury here. Again
17 do not show a continuous and substantial activity in the
18 state. There just is not sufficient basis to sue the
19 defendant in the state. If Consolidated Oil is liable it
20 ought be sued in the State of Colorado where the accident
21 occurred, where property and everything occurred.

22 It appears to us the only thing in this state is
23 that the plaintiff happens to live here and that does not
24 give the state jurisdiction over a nonresident defendant.

25 THE COURT: There was a contract communication.

1 MR. ALLRED: Not between the defendant and the
2 plaintiff. There is an argument that Consolidated had
3 contacted the plaintiff's employer about doing some -- the
4 work in Colorado. But there's no contact between the
5 plaintiff --

6 THE COURT: The same person that signed your
7 affidavit that --

8 MR. ALLRED: That. There was some spot sales.

9 THE COURT: Asked them to come down twice so
10 there's -- there is something in the State of Utah. It's not
11 well --

12 MR. ALLRED: I think the affidavit that's signed
13 by our person says that -- I've got it here. That there were
14 occasional purchases made by Consolidated of petroleum
15 products in the state which are unrelated to this particular
16 matter.

17 THE COURT: Somewhere in there, Mr. Allred,
18 probably (Inaudible) they said that they had contacted the
19 employer of the plaintiff on two occasions to come down and
20 use the hot oil truck, Adler, I guess.

21 MR. ALLRED: That's correct.

22 THE COURT: So that there was some contact in
23 the State of Utah.

24 MR. ALLRED: The affidavits of Consolidated
25 contact in Utah are limited to electronic communications to

1 accomplish purchase of transfer involved product and then
2 there is the pleadings of the matter and the involvement as
3 alleged by the plaintiff says that Consolidated contacted
4 Adler Hot Oil to go do some work occasionally in Colorado. So
5 that would be the extent of contact.

6 There was no contact between Consolidated and the
7 plaintiff and the lawsuit doesn't -- isn't a claim of some
8 violation of contract but as a tort claim arising out of an
9 accident and injuries in Colorado. So I don't see that those
10 contacts give the State of Utah jurisdiction over this
11 defendant.

12 THE COURT: Okay.

13 MR. ALLRED: Thank you.

14 THE COURT: Mr. Cundick.

15 MR. CUNDICK: Thank you, Your Honor.

16 Your Honor, a --.

17 THE COURT: You know I saw you frantically
18 trying to get a hold --

19 MR. CUNDICK: I've got it.

20 THE COURT: Are you ready to deal with --

21 MR. CUNDICK: I'm ready to deal with it, Your
22 Honor, and perhaps -- perhaps I could just start out by
23 saying what part of the Arguello -- what is the issue that
24 concerns you and let me address it.

25 THE COURT: Okay. What I'm concerned about is --

1 I don't know if its fair to you -- as I went through here,
2 here are my problems.

3 It looked like according to all the definitions
4 that I could see that there wasn't general jurisdiction. That
5 is that there must be specific, some kind of specific contact
6 with the State of Utah. I couldn't see that you alleged facts
7 which would show --

8 MR. CUNDICK: So if there's no jurisdiction --

9 THE COURT: General jurisdiction that's
10 specific.

11 MR. CUNDICK: Your Honor, while you're looking
12 at it let me just address general jurisdiction first.

13 THE COURT: All right. This is what the
14 Arguello case says about general jurisdiction. There must be
15 substantial and continuous local activity. That's in the
16 State of Utah. Substantial and continuous. And I just -- I
17 didn't see anything that I could look at and even come close
18 to what would be substantial and continuous local activity in
19 the State of Utah. So I -- I'll let you address that issue.
20 And you ought to be aware that as I read through what I saw
21 that I just didn't see enough for general jurisdiction.

22 And then my problem is is that the contacts here,
23 and this is I think really the holding of Arguello is that
24 you look at the nature of the contact and the claim. The
25 nature of the contact here was a contract action. If this

1 were a suit in contract I would feel great about it.

2 MR. CUNDICK: Sure.

3 THE COURT: But this isn't suit in contract. The
4 contacts with the State of Utah didn't directly relate to the
5 tort action which arose in the State of Colorado. And I think
6 that's what Arguello says that there's not only got to be
7 contact but for specific jurisdiction there needs to be a
8 relationship between the contract and the cause of action.
9 It's not a " but-for" test.

10 MR. CUNDICK: I agree.

11 THE COURT: It's not " but for" them calling we
12 wouldn't have gone to Colorado. And so I, you know, quite
13 frankly that's the issue that I have and that's why I think
14 Arguello is the controlling case in this matter.

15 MR. CUNDICK: And let me speak to those then.
16 Thank you very much, Your Honor.

17 Speaking first to the specific jurisdiction. I
18 need to show for specific jurisdiction to be asserted I've
19 got to rely on Utah's long arm statute, and the first item
20 that I need to show is the defendant was transacting business
21 in the State of Utah.

22 THE COURT: I'll give you that.

23 MR. CUNDICK: We both agree with that.

24 THE COURT: I'll give you that.

25 MR. CUNDICK: Okay. So let's move on to the

1 next one. I've got to show -- once I show that it's
2 transacted in the State of Utah then I have to show that the
3 claim arises out of that transaction.

4 THE COURT: Right.

5 MR. CUNDICK: And that's what you're struggling
6 with and that's what I'd like to answer. And it's -- our
7 view is that Consolidated calls up Utah Adler Oil, Hot Oil,
8 and says we want you to perform ultra hazardous activity in
9 the State of Utah. Adler says, okay, we'll do it. So they go
10 to -- they send in -- State of Utah. State of Colorado.
11 What did I say?

12 MR. ALLRED: Utah.

13 MR. CUNDICK: Thank you. So Adler says, Adler
14 Oil sends their representative, Joseph Mecham goes to
15 Colorado to perform the contract, and it's in performing the
16 contract, this ultra hazardous activity that he's injured.
17 So the nexus right there is the performance of the contract
18 caused the injury. That is --

19 THE COURT: Because it was ultra hazardous?

20 MR. CUNDICK: Exactly. And that's what our
21 complaint states, too, in paragraphs 60 through 65 there --.

22 THE COURT: If this were just a call to service
23 a xerox machine under the same circumstances only for some
24 reason the machine blew up the minute the person touched it
25 then you would say there's no jurisdiction.

1 MR. CUNDICK: Right. Because there's no
2 relationship there. Here there's a direct relationship.
3 They're asking him to perform an ultra hazardous contract.
4 They're asking him to go on to a hot oil site or on to a
5 refinery where it's very rare to even have an open flame,
6 take a hot oil truck that's full of flame and perform an act
7 of heating up this oil to take it out.

8 So it's the contract itself that they've -- that
9 they asked -- they asked Adler to perform an ultra hazardous
10 activity. And that -- and the injury occurs in performance of
11 that ultra hazardous activity. Clearly then to us the claim
12 arises out of the activity in Utah. The activity in Utah is
13 arranging for the contract and then performing it, it clearly
14 arises out of it.

15 Once that's established then we just go on to the
16 fundamental fairness whether it was foreseeable that
17 litigation relating to that contract could be brought in
18 Utah. This was discussed in (Inaudible). I think we're
19 clearly in that one, too. We're clearly in the transacting
20 business. We're clearly in the fundamental fairness and
21 notions of fair play and substantial justice. The only
22 question is did it arise out of it. I think it's clear that
23 it did. I think it's clear that it did.

24 And, Your Honor, let me move on to the general
25 jurisdiction.

1 THE COURT: So you are arguing general
2 jurisdiction.

3 MR. CUNDICK: Yes, excuse me.

4 THE COURT: What have you pled that would say
5 that there's (Inaudible) and substantial business in the
6 State of Utah?

7 MR. CUNDICK: Thank you. This Arguello case was
8 decided back in 1992 before the Brash and International,
9 okay? Now in my response memorandum I quote a case from Utah
10 which quotes a Zippo case. The Zippo case is a fairly famous
11 case. It's referred to in virtually every
12 Internet/jurisdiction case. It's kind of set down the law,
13 and it says there's a scale here of jurisdiction.

14 There's the -- there's the personal jurisdiction
15 is established when a defendant clearly does business over
16 the Internet such as entering into contacts which require the
17 knowing and repeated transmission of computer files over the
18 Internet.

19 Well of course this would -- this would satisfy
20 that presence in the State of Utah. I can flip on my
21 computer, pull up a site. Everybody in Utah can pull up a
22 site on their computer from Consolidated Oil, from the
23 defendant.

24 Now -- but that in and of itself is not enough.
25 Just pulling up the site that's not a presence in Utah

1 because that would be similar to just an advertisement.

2 THE COURT: Well, didn't those cases also
3 distinguish between -- and you talked about the transference
4 of files.

5 MR. CUNDICK: Exactly.

6 THE COURT: And I looked at the Internet site
7 and it wasn't interactive. In other words you don't log on to
8 that and make an order onto that Internet site.

9 MR. CUNDICK: They request you to contact them
10 to setup an order.

11 THE COURT: Okay. But that's different than the
12 case that you cited. Said if there is an electronic
13 transference of files.

14 MR. CUNDICK: Exactly.

15 THE COURT: And --

16 MR. CUNDICK: But if -- Your Honor, if you look
17 at their -- if you look at their memoranda their opening
18 memoranda and the affidavit that's attached thereto you look
19 and it's paragraph eight of the affidavit of Sherry Ebert,
20 Consolidated contacts with Utah are limited to electronic
21 communications that accomplish purchase and transportation of
22 both product, that seems to be exchanging Internet file are
23 -- or computer files over the Internet which satisfies the
24 general jurisdiction test for -- that was set out in Zippo.

25 Now, Your Honor, I don't know if that statement in

1 the affidavit of Sherry Ebert in and of itself is enough.
2 Okay? Because it doesn't really clearly say that they're
3 doing it over the Internet, that they're exchanging computer
4 files, and I don't know if it's enough.

5 So what I am here is requesting this. I think
6 there's enough for the court to find specific jurisdiction so
7 it doesn't even have to meet the general jurisdiction issue.
8 I think the fact that they asked Adler to perform ultra
9 hazardous activity and the plaintiff was injured in
10 performance of that ultra hazardous activity satisfies the
11 arising out of test that's set forth in Arguello and also
12 restated in Novamud (phonetically).

13 I think there's enough there to find specific
14 jurisdiction. If the court feels that that is not enough,
15 that we have not shown specific jurisdiction then I would
16 request the court give us leave to conduct limited discovery
17 on the issue of this Internet. Because if they are -- if
18 Consolidated Oil is transacting business in the State of Utah
19 over the Internet they have satisfied the general
20 jurisdiction issues.

21 THE COURT: (Inaudible) fair, Mr. Allred, I kind
22 of tipped my hand and said I don't think you've got it here
23 and now you're arguing that you should be given more time and
24 you only argue that after I say, well, I don't think you've
25 got general jurisdiction. You didn't file a Rule 56(f), I

1 think it is, request for additional discovery.

2 MR. CUNDICK: No, I did not.

3 THE COURT: It seems like it would be highly
4 unfair to somebody to allow you to come in and argue the case
5 and listen to what I have to say and then say, well, I can
6 kind of see, judge, that you're not in agreement with what --
7 what I think as to general jurisdiction so what I really want
8 is some more time to develop that. I think you have to do
9 that before you get here.

10 MR. CUNDICK: Your Honor, that may well be but I
11 think -- I certainly think there's enough for specific
12 jurisdiction. I think we also have set out a case for general
13 jurisdiction.

14 I think that what has been stated in the affidavit
15 of Shirley Hebert and what's been stated in the opening
16 memoranda by Consolidated gives rise to general jurisdiction
17 just over the relatively new Internet law. They have now
18 made a presence in Utah because they have a site where they
19 give -- it's more than a passive site. It's just not an
20 advertisement. It's something where they've got -- it was
21 attached to our reply memorandum, or response memorandum.

22 There's page after page giving information about
23 the company and urging you to contact them to contract with
24 them, and I think that plus the affidavit of Sherry Hebert
25 where she admits that they're -- they're making electronic

1 communications over the Internet -- over the Internet gives
2 the court sufficient evidence to find general jurisdiction.

3 I think we've got specific jurisdiction. I think
4 we've got general jurisdiction.

5 THE COURT: Okay. Mr. Allred, do you have
6 anything else you'd like to say?

7 MR. ALLRED: I might, Your Honor, touch briefly
8 on that Internet issue. First of all I note that all the
9 cases that have been cited out of the federal circuit are all
10 specific jurisdiction cases generally involve something in
11 addition to a web site and the use of it. Might also indicate
12 basically what the courts are saying is you've got
13 informational which is -- doesn't give any jurisdiction.
14 You've got interactive, which does, and then you may have
15 something in between.

16 Patriot case that's attached to our memorandum, a
17 Federal case, actually talks about a web site very similar to
18 this. On page seven there it cites a case out of the Second
19 Circuit, Bunsen Restaurants versus King which says defendants
20 maintenance of an Internet web site with a telephone number
21 to order allegedly infringing product is insufficient to
22 support jurisdiction of the defendant.

23 That's what we had here. We had information that
24 said if you're interested here's a number to call. It wasn't
25 interactive. It didn't meet any of the rest. There just is

1 really no basis here for general jurisdiction.

2 The court noted, I think, Arguello is the most on
3 point Utah case here. Also I think Roskelly and Nuway also
4 have some involvement there. I don't think there's basis for
5 specific jurisdiction. The argument by counsel being made is
6 that Consolidated made a phone call, made a contract with
7 Adler who was the employer of this guy who then went over to
8 Colorado and was injured. That's kind of a bootstrapping
9 theory.

10 Again the Patriot case, the federal case rejected
11 that kind of argument. Said you can't bootstrap into it.
12 The cause of action you claim has got to rise out of the
13 conduct.

14 And here's a tort claim for ultra hazardous
15 activity as to type for specific jurisdiction. The conduct
16 that causes the injury or gives rise to the claim has to
17 occur in Utah. It didn't. The conduct that is alleged to
18 have occurred being the owning of a product or ultra
19 hazardous activity in Colorado. All occurred in Colorado.

20 There just is very limited involvement of our
21 client in this state. And really I'm at kind of a loss as I
22 got into this case why it wasn't ever filed in Colorado where
23 everything happened. We'd ask the court to grant our motion.

24 THE COURT: Anything further?

25 MR. CUNDICK: I just -- and I appreciate the

1 court letting me just on -- if you just look at the pages and
2 pages off the Internet, approximately eleven, twelve times
3 they're requesting that you contact them or E-mail them.
4 They even have a place where they say click here to E-mail.

5 Mr. Freestone indicates it's 21 times they invite
6 you to -- I think that's more than just a passing (Inaudible)
7 on passive advertisement on the web site.

8 THE COURT: As you point out I think that
9 there's a certain aspect to developing law. The underlying
10 ideas whether or not there's fundamental fairness to -- I
11 think that's not going to change the mechanism to apply the
12 fundamental fairness doctrine will be tweaked with as we have
13 developing technology.

14 The issue when you get right down to it is whether
15 it's fair for someone in the State of Utah who contacts Adler
16 Oil and asks them to come over and perform a hot oil
17 treatment on the oil in Colorado, whether or not they should
18 be required to defend themselves in the State of Utah. It's
19 not dispositive as to a cause of action. It's only
20 dispositive as to the location of the action and it means a
21 great deal, I think, to the attorneys and to clients also, I
22 believe, especially the plaintiff in this case who is a
23 resident of, I think this community. I think he's a resident
24 of the Vernal area.

25 He'd have to go down, and I don't know whether or

1 not his lawyers from the State of Utah would have -- would
2 have the ability to go down or whether or not that would even
3 be financially practical for them to go down and to represent
4 him in the State of Colorado. But it doesn't dispose of the
5 action.

6 And I do and I'll -- I read, I think, the two
7 cases that I think I need to read. And I read all of the
8 motions. I've read all of the paperwork and I don't think
9 that there's jurisdiction. I -- I think that there needs to
10 be a closer connection between the cause of action and the
11 Utah contacts. And where the Utah contacts at best can be
12 described as purchasing things in the State of Utah over the
13 web -- not over the web but over the Internet and receiving
14 orders over the Internet from the State of Utah, I don't
15 think -- this is what I view my obligation here.

16 I think that Justice Zimmerman made it clear that
17 I am to resolve all conflicts in this matter in your favor,
18 plaintiff's favor as to jurisdiction. But it remains the
19 burden of the plaintiff to prove jurisdiction. So if there's
20 no conflict I just take the facts as I find them. If there is
21 a conflict then I take the facts in the light most favorable
22 to the plaintiff. And then I must find that jurisdiction has
23 been established according to the due process requirements
24 that I've outlined.

25 I -- there's nothing in the affidavits or any

1 place. They talk about some Internet contact but there's
2 nothing (inaudible) which would show substantial and
3 continuous local activity in the State of Utah.

4 The volume I think is important and the affidavit
5 -- is it Stinson? Is that her name? The lady that provided
6 the affidavit, and also referring to what Mr. Allred said in
7 his memoranda which you referred to, viewing those things
8 even in the light most favorable where there is a conflict
9 and where there's not a conflict I'm just taking -- when
10 there's not a conflict there's no -- there's no dispute as to
11 the evidence.

12 So I'm not weighing the evidence but I must make a
13 finding that the plaintiff has met it's burden of showing
14 jurisdiction, and I do not think there's been substantial and
15 continuous local activity within the State of Utah such to
16 give the court jurisdiction over any cause of action.

17 You must remember I think that what they're
18 talking about in general jurisdiction is that you can serve
19 -- sue that person for any reason in the State of Utah
20 based upon their contacts in the State of Utah. It doesn't
21 have to relate to anything that happened in the State of
22 Utah. It just has to relate to that person who's conducting
23 substantial and continuous local activity in the State of
24 Utah, and I just can't see that.

25 The long arm statute I think that there is a --

1 there's no allegation that the tort action occurred in the
2 State of Utah. But there is an allegation that the defendant
3 conducted business in the State of Utah. I think that's
4 sufficient to meet the first step of the analysis that's set
5 forth in the Arguello case. But then the court after looking
6 at that as the court found in Arguello, I must find that
7 there's a relationship between the contacts and the cause of
8 action, and it's not just a " but for" analysis.

9 And I think that the same thing could have been
10 argued in the Arguello case where these people came to the
11 State of Utah and advised a person in Logan as to the wood
12 making machine as I recall, didn't perform any services on it
13 but told them what to do in order to correct a mistake. And
14 I guess you could argue that that was a contract to come to
15 the State of Utah to advise somebody as to substantive -- as
16 to fixing a machine that may be very destructive. In fact
17 Mr. Arguello was, I think, according to the case, was
18 seriously injured as a result of that.

19 The language that I'm referring to in the Arguello
20 case is on page -- well, this page number won't help you.
21 Says, " These cases demonstrate that due process is not
22 satisfied by the quantity of context." And I note here that
23 there's very, very -- there's not a real high quantity of
24 contacts.

25 Continuing." Satisfied by the quantity of contacts

1 with the state but rather their quality and nature of the
2 minimum contacts and their relationship to the claims."

3 And I just don't think that there's a
4 relationship. I think that calling somebody to perform a
5 contract in the State of Colorado does not, based upon these
6 facts, grant jurisdiction for a tort that subsequently
7 happens in the State of Colorado. This is something that my
8 views I guess don't matter, and it may be a matter that you
9 want to visit with the Court of Appeals or the Supreme Court
10 on, and I'm certainly not offended by that.

11 I just -- I mean, I read it. I looked at it. I
12 considered it, and sometimes I really have to struggle with
13 things, and my only struggle really, to be honest with you,
14 is I think it's hard on this plaintiff. My decision if I --
15 if I had to choose personally between corporations and people
16 I'm probably going to choose people.

17 But based upon the law I'm convinced that this
18 court doesn't have jurisdiction. And I think that to go
19 through this and for me to deny this motion and even go up to
20 the point of judgment and jurisdiction is something that can
21 be raised any time. It's been specifically raised in this
22 case and in my judgment I've done you a favor because if you
23 got the judgment it wouldn't be any good in my -- at least
24 against this plaintiff who's -- (Inaudible).

25 I -- like I say, I didn't mind handling the case

1 and I don't invite appeals but if you'd like to take this up,
2 that's fine. Frankly, I didn't think it was that close of a
3 legal issue when I got into it.

4 So I'll grant the motion to dismiss for lack of
5 jurisdiction.

6 The pleadings have been supplemented by the
7 affidavits. Your other ground was that they failed to plead.
8 I'll grant your motion on the issue of general jurisdiction
9 because I don't think they even pled that. Specific
10 jurisdiction, I think that that was adequately raised by the
11 pleadings.

12 And, Mr. Allred, would you prepare court's --
13 findings are not appropriate because this is something that
14 the Supreme Court will review as a matter of law. So,
15 findings are in order. I suppose there's a degree in there
16 where I have to evaluate the contacts, and I think that they
17 were minimal. To that extent you better have some findings
18 that I just -- I just thought that they were minimal.
19 Didn't have base. But you prepare that.

20 Mr. Freestone, you prepare the court's ruling on
21 the motion for summary judgment.

22 MR. ALLRED: Yes, Your Honor.

23 THE COURT: What can I do to help you? Anything
24 further? I guess I've wrecked some ships here today.

25 MR. CUNDICK: Your Honor, probably what we need

1 to do is get Barbara Maw on the line and setup a time for her
2 motion for summary judgment. She wanted to appear by phone
3 today.

4 THE COURT: Oh.

5 MR. SWENSON: As well other scheduling issues
6 which we had agreed to discuss.

7 THE COURT: Okay. I wonder if you'd come into
8 chambers. I'd like to take care of Mr. Sam and this young
9 lady back there.

10 (Whereupon, court was held in recess at 2:51.)

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1 STATE OF UTAH)

2 : ss

3 COUNTY OF SALT LAKE)

4 I, PAMELA C. SMITH, Certified Shorthand Reporter,
5 Registered Merit Reporter and Notary Public within and for
6 the County of Salt Lake, State of Utah, do hereby certify:

7 That I was NOT present at the foregoing court
8 proceedings;.

9 That the foregoing record was preserved by
10 videotape;.

11 That thereafter, I stenographically recorded the
12 requested portion of the video and translated the same using
13 computer-aided transcription, followed by a proofreading
14 against the video.

15 That the foregoing pages contain to the best of my
16 ability a full, true and correct transcript of the same.

17 In witness whereof, I have subscribed my name and
18 affixed my seal this ____ day of _____, 2001.

19

20

21 PAMELA C. SMITH, C.S.R., R.M.R.
22 Notary Public

23

24

25 My Commission Expires:.