

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 272

Approved June 9, 1992

RESOLVED, That His Honor the Mayor is hereby authorized to execute the second amendment to the lease made and entered into by and between the City of Providence, a Municipal Corporation created under the Laws of the State of Rhode Island acting by and through the Providence Port Commission and Texas Eastern Products Pipeline Company, limited partnership, a Delaware Limited Partnership of which Texas Eastern Products Pipeline is the General Partner.

IN CITY COUNCIL
JUN 4 1992
READ AND PASSED
Erlyn V. Fargnoli
ACTING PRES.
Michael R. Clement
CLERK

APPROVED
JUN 9, 1992
Steven A. Craver
MAYOR

IN CITY COUNCIL
FIRST READING
REFERRED TO COMMITTEE ON CITY PROPERTY
Michael R. Clement CLERK

THE COMMITTEE ON CITY PROPERTY
Approves Passage of
The Within Resolution
Michael R. Clement
Chairman
May 20, 1992 Clerk

Councilwoman Williams and Councilman Rollins

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (the "Amendment") is made and entered into as of the 10th day of May, 1991, by and between the City of Providence, a municipal corporation created under the laws of the State of Rhode Island, acting by and through the Providence Port Commission ("LESSOR") and TE Products Pipeline Company, Limited Partnership, a Delaware limited partnership of which Texas Eastern Products Pipeline Company is the general partner ("LESSEE").

W I T N E S S E T H:

WHEREAS, LESSOR and Petrolane, Inc., a California corporation (the "Original Lessee") entered into that certain Indenture of Lease dated May 20, 1971, as amended by that certain Amendment and Extension Agreement dated January 10, 1974, also executed by LESSOR and the Original Lessee (collectively, the "Lease") for a certain tract or parcel of land located in the northeasterly corner of Fields Point Drive and Seaview Drive in the Fields Point section of the City of Providence, County of Providence, State of Rhode Island, and more particularly described in the Lease; and

WHEREAS, LESSEE is the present owner and holder of all of the right, title and interest of the tenant under the Lease and LESSOR is the present owner and holder of all of the right, title and interest of the landlord under the Lease; and

WHEREAS, LESSOR and LESSEE executed a Memorandum of Lease, dated December 21, 1990 and recorded in the Office of the Recorder of Deeds of the City of Providence on February 6, 1991, at 2:24 p.m.; and

WHEREAS, the parties hereto have executed an Amended Memorandum of Lease dated as of the date hereof and to be recorded in the aforesaid Office of the Recorder of Deeds; and

WHEREAS, the parties hereto desire to modify the rent structure and further amend the Lease in certain other respects; and

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings herein as contained in the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE do hereby agree as follows:

1. Paragraph 1 of the Lease is hereby deleted in its entirety and the following new Paragraph 1 is hereby substituted and inserted therefor:

"TO HAVE AND TO HOLD the demised premises and said appurtenances thereto for a term of five (5) years, beginning on and as of May 13, 1991 and ending on May 12, 1996, unless sooner terminated as hereinafter provided, subject to LESSEE's options to extend the term of the lease for eight (8) additional periods of five (5) years each, pursuant to the provisions of Paragraph 12 hereof." A "Lease Year" shall commence on May 13, of each year and shall end on May 12, of the next succeeding year.

2. Paragraph 2 of the Lease is hereby deleted in its entirety and the following new Paragraph 2 is hereby substituted and inserted therefor:

"2. (a) LESSEE covenants and agrees to pay to LESSOR as base rent an annual rental of TWO HUNDRED THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$213,500.00), in equal quarterly installments of FIFTY-THREE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$53,375.00), payable in advance at the office of the City Collector of the City of Providence, on the first business day of June, September, December and March of each year that this lease is in effect.

(b) In addition to the base rent, LESSEE shall pay with each payment of the base rent the following fees and charges as applicable for the period involved:

(1) Wharfage Fees - LESSEE shall pay to LESSOR wharfage fees, at the incremental rates set forth below, for all LESSEE's cargo loaded and/or unloaded at the demised premises, which fees shall be set at LESSOR's published tariff rates (the "Tariff Rate") as are from time to time in effect for liquified petroleum gas (currently at \$0.40 per "short ton", as such term is defined in Lloyd's Register of Shipping).

For each year during the term of this Lease, LESSEE shall pay to LESSOR wharfage fees as follows:

(i) For the first 100,000 short tons: 100% of the Tariff Rate;

(ii) For the next 50,000 short tons: 75% of the Tariff Rate; and

(iii) For all excess above 150,000 short tons: 62.5% of the Tariff Rate.

(2) Dockage Fees - LESSEE shall pay to LESSOR "dockage fees" (defined as the fees assessed against a vessel for berthing at the demised premises or for mooring to a vessel so berthed), which fees shall be set at LESSOR's published Tariff Rates as are from time to time in effect (currently at \$0.22 per "net registered ton", as such term is defined in Lloyd's Register of Shipping).

(3) Minimum Wharfage and Dockage Fees - Notwithstanding anything set forth herein to the contrary, for each Lease Year during the term of this lease, LESSEE shall pay to LESSOR a minimum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in the aggregate as wharfage and dockage fees. If the minimum guarantee of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) is not derived from wharfage and dockage fees during any Lease Year, then LESSEE shall remit to LESSOR on or before July 31, of the next succeeding Lease Year, the differential between SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) and the amount actually received by LESSOR from wharfage and dockage fees; PROVIDED, HOWEVER, that if LESSEE's use of the port facilities during any Lease Year shall be curtailed by reason of loss, damage, detention or delay resulting from causes beyond LESSEE's reasonable control, or from fire, strike or other concerted action of workmen, act or omission of any governmental authority, insurrection or riot, embargo, car shortage, wreck or delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities, then in any such event, the minimum guarantee of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) shall either be equitably adjusted downward by such amount of money as may be reasonably necessary to compensate for the circumstances giving rise to this proviso or, at its election, LESSEE may reduce the minimum guarantee in the Lease Year of the circumstance giving rise to this proviso by an amount of money equal to the average revenues paid to the City of Providence for wharfage and dockage pursuant to the terms of this lease in excess of the minimum guarantee for each of the prior three (3) years.

(4) Idle Status Fees - LESSEE shall pay to LESSOR "idle status fees" (defined as the fees assessed against a vessel prior to the commencement or subsequent to the completion of loading and/or unloading cargo while the vessel is berthed at the demised premises), which fees shall be set as LESSOR's published Tariff Rates as are from time to time in effect (currently at \$0.17 per net registered ton)."

3. Paragraph 12 of the Lease is hereby deleted in its entirety and the following new Paragraph 12 is hereby substituted and inserted therefor:

"12. LESSEE shall have the option of renewing this lease for eight (8) successive five (5) year periods, beginning on May 13, 1996. Any such renewal shall be upon the same terms and conditions as are contained in this lease, excepting as to the annual rental charges, which shall be renegotiated at five (5) year intervals as provided in this paragraph; notice of election of these options to be given at least twelve (12) months prior to the termination of the then applicable term in the manner provided herein. This notice requirement shall apply to any options exercised hereunder. In case the parties cannot agree as to said rental charges, it shall be the fair market rental value amount for such charges which shall be fixed and determined by a majority of three (3) disinterested persons--one chosen by the Mayor for the time being of the City of Providence, the other by LESSEE, the third by the two (2) so chosen; the decision of said majority shall be final and binding upon the parties hereto and the costs of arbitration shall be borne equally between LESSOR and LESSEE. Pending the determination of the fair market rental amount, LESSEE shall pay for such charges at the prior rate. The difference, if any, between the amount paid at the prior rate by LESSEE during the arbitration proceeding and the fair market rental amount finally determined by such arbitration proceeding, shall be (i) paid by LESSEE in full within thirty (30) days after such final determination, or (ii) applied as a credit by LESSOR to LESSEE's next quarterly payment or payments of the annual rental charges, as the case may be.

In case the two (2) arbitrators chosen by the respective parties cannot agree upon a third person, then such third person shall be appointed by the Presiding Justice of the Superior Court for the Counties of Providence and Bristol, upon petition filed by either party."

4. LESSEE shall provide at LESSEE's own cost and expense, and keep in force during the term of this Lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in the State of Rhode Island, selected by LESSEE, and reasonably satisfactory to LESSOR, in a combined single limit of at least One Million Dollars

(\$1,000,000.00) with respect to injury or death to any person or persons or damage to property.

5. Paragraph 8 of the Lease is hereby amended by adding the following after the address given for LESSEE:

"with a copy to: Hinckley, Allen, Snyder & Comen
 1500 Fleet Center
 Providence, Rhode Island 02903
 Attn: John R. Allen, Esq."

6. This Amendment shall become effective as of May 13, 1991.

7. In the case of any conflict between the terms of this Amendment and the terms of the Lease (prior to such amendment), the terms of this Amendment shall supercede and control.

8. The Lease, as modified and amended hereby, is and shall remain in full force and effect, and is hereby ratified, confirmed and approved.

9. The terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, LESSOR and LESSEE have executed this Amendment as of the day and year first above written.

WITNESS:

LESSOR:

CITY OF PROVIDENCE, RHODE ISLAND

By: Providence Port Commission

By: _____
William H.D. Goddard,
Chairman

By: _____
Vincent A. Cianci, Jr., Mayor

LESSEE:

TE PRODUCTS PIPELINE COMPANY,
LIMITED PARTNERSHIP

By: Texas Eastern Products Pipeline
Company, its General Partner

By: _____
Title: _____

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, on the ____ day of _____, 1992, before me personally appeared William H.D. Goddard, the Chairman of the Providence Port Commission, on behalf of the City of Providence, Rhode Island, to me known and known by me to be the party executing the foregoing instrument, for and on behalf of the Providence Port Commission, on behalf of the City of Providence, Rhode Island, and he acknowledged said instrument, by him executed, to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the Providence Port Commission, on behalf of the City of Providence, Rhode Island.

Notary Public
Printed Name: _____
My Commission Expires: _____

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, on the ____ day of _____, 1992, before me personally appeared Vincent A. Cianci, Jr., the Mayor of the City of Providence, Rhode Island, to me known and known by me to be the party executing the foregoing instrument, on behalf of the City of Providence, Rhode Island, and he acknowledged said instrument, by him executed, to be his free act and deed, his free act and deed in

his capacity as aforesaid, and the free act and deed of the City of Providence, Rhode Island.

Notary Public
Printed Name: _____
My Commission Expires: _____

STATE OF _____
COUNTY OF _____

In the Town/City of _____, in said County and State, on the ____ day of _____, 1992, before me personally appeared _____, the _____ of Texas Eastern Products Pipeline Company, the general partner of TE Products Pipeline Company, Limited Partnership, to me known and known by me to be the party executing the foregoing instrument, for and on behalf of Texas Eastern Products Pipeline Company, the general partner of TE Products Pipeline Company, Limited Partnership, and he acknowledged said instrument, by him executed, to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of Texas Eastern Products Pipeline Company, the general partner of TE Products Pipeline Company, Limited Partnership.

Notary Public
Printed Name: _____
My Commission Expires: _____

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PORT OF PROVIDENCE

Thomas F. O'Connor, Jr.
Executive Director
(401) 781-4717
Fax 461-6240

May 6, 1992

Mr. Michael Clement, City Clerk
City Hall
Providence, Rhode Island 02903

Re: TEPPCO LEASE

Dear Mr. Clement:


Please find enclosed (6) copies of the Texas Eastern Products Pipeline Company (TEPPCO) Lease Amendment for consideration and approval by the City Council. The Lease Amendment has been reviewed and approved by the Port Commission.

As previously discussed, I am requesting that the Lease Amendment be considered at the May 7, 1992 meeting of the City Council. I understand that the Lease Amendment will be referred to the City Council Committee on City Property for its review and recommendation to the full Council.

I would request that the Property Committee consider this matter at its earliest convenience so that anticipated revenue which will be generated can be in hand before the end of the fiscal year. This would amount to in excess of approximately \$180,000 by our rough estimate.

The Port Commission and I stand ready to meet with the Property Committee to answer any questions regarding the Lease.

Sincerely,


Thomas F. O'Connor, Jr.
Port Director

cc: John Lombardi
William H.D. Goddard

enclosures