CHG 01637

PLAINTIFF'S EXHIBIT

UPRC-153

w/comments

KOCH

KOCH CARBON INC

December 9, 1985

Mr. Gene Kerber
Champlin Petroleum Company
P.O. Box 7
Fort Worth, Tx 76101

SUBJECT: COKE SALES AGREEMENT - CORPUS CHRISTI REFINERY

Dear Gene:

We have reviewed subject contract and would appreciate your review of the following points:

1. Refer to Paragraph 9. Moisture - To add clarity we suggest that the first sentence of this paragraph be modified as follows: "The moisture content of the coke shall be determined by tests performed by Seller's laboratory using such sampling and testing methods as Seller and Buyer may mutually agree upon and the moisture content so determined shall be subtracted from the weight of the delivered coke to determine the number of dry short tons delivered".

2. Refer to Section 19. Indemnity and Insurance - Change 19 Ac as follows: "any Workmen's Compensation or Employer's Liability calim from Buyer's employees". Also, Koch requests a counter-indemnity from Champlin to Koch for similar provisions. We suggest that Paragraph C be added as follows:

Allen Caldwell Attorney for Koch Carbon

C. Seller agrees to defend, indemnify and hold Buyer harmless from any loss, cost, claims, or expenses arising from any claim, demand or legal action for:

or subcontractors or agents etc.?

a. personal injury or property damages allegedly arising out of Seller's employees or its agent, production and removal of the coke from the coke drums on Seller's premises, or

b. any workmen's compensation or employer's liability claimed from Seller's employees, or

CH/W-002702

Gene Kerber
Page 2
December 9, 1985

c. any other claim which arises out of or relates to Seller's performance under this contract unless said claim is caused by the sole negligence or wilfull misconduct of Buyer's agents or employees.

3. Refer to Paragraph 20. Safety Precautions - Change 20(A) 5 as follows: "Buyer shall convey to its employees and contractors all information it has received from Champlin relating to extraordinary, (unique) hazards of the Champlin operation, if any, and environments that may be encountered so that appropriate precations can be taken by said employees and/or contractors. Such information shall be given via advanced briefings".

Change 20(A) 6 as follows: "Champlin requires Buyer to take reasonable precautions for the safety and health of Champlin's employees when performing work for Champlin and to perform its activities in such a manner as not to create an unreasonable risk for the employees of Champlin and its property".

Allen Caldwell Attorney for Koch Carbon.

Please advise if you agree with these changes which we hope can be incorporated prior to final signing.

Very truly yours,

E.T. Fish

INS. Clause

Use of Customers Pad for 2 or 3 years

ETF/trg

CH/W-002703

COKE SALES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of ________________, 1985, by and between CHAMPLIN PETROLEUM COMPANY, a Delaware corporation (hereinafter called "Seller"), and KOCH CARBON, INC., a Delaware corporation, (hereinafter called "Buyer").

WITNESSETH:

Seller has a refinery at Corpus Christi, Texas, from which it is producing petroleum coke. Buyer desires to purchase this coke from Seller and Seller is willing to sell the same upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed as follows:

1. Products and Quantity

Seller agrees to sell and make available to Buyer and Buyer agrees to purchase and receive from Seller, Seller's total production of still run coke (hereinafter referred to as "coke") from Seller's West Plant Refinery expansion of its Corpus Christi, Texas Refinery (hereinafter called "West Plant") which production is estimated at four hundred eighty thousand (480,000) tons per year.

Notwithstanding anything contained in above paragraph, Seller hereby retains the right to negotiate a sales contract upon notice given to Buyer under this contract with any or all of (but not limited to) the following entities:

Capital Aggregates
Centex Cement Corp.
Central Power & Light

To the extent that Seller enters into a sales contract(s) with any of the above entities or with some other domestic petroleum coke consumers or purchasers, the total production of petroleum coke available to Buyer pursuant to the preceding paragraph will be reduced by the production covered by such other sales contracts. Seller agrees it shall not commit more than twenty-five percent (25%) in the aggregate of its total coke production described above to these domestic entities. In the event Seller wishes to begin selling petroleum coke to other domestic consumers not listed above, then Seller shall provide three (3) months notice to Buyer of such increase in sales. Buyer agrees to promptly purchase, upon ten (10) days notice, any amounts of coke withheld for sale to these entities which is not actually delivered to them.

2. Term

This Agreement shall be effective from January 1, 1986 until December 31, 1987, and from year to year thereafter unless or until terminated either at the end of the first two (2) year term or at the end of any subsequent yearly period by either party giving the other not less than ninety (90) days' prior written notice of termination. Provided, however, this Agreement may be sooner terminated in accordance with Section 4 hereinafter.

3. Quality

The coke shall be still run in size, meaning that no preparation by Seller as to size is required after the coke is removed from the stills in which it is produced. The Seller makes no representation as to the specifications of the coke produced. However, for informational purposes only, analytical tests run by the Buyer shall be furnished to the Seller.

4. Price

A. Price

Subject to the price modification provisions in Subsection B hereunder, for each quantity of coke sold to Buyer by Seller, Buyer shall pay the Seller the sum of Thirty-two and 70/100ths Dollars ($32.70) per dry short ton (i.e. 2,000 pounds, avoir dupois weight) f.o.b. Seller's "coke pad" at the Corpus Christi Refinery as determined in accordance with Paragraph Eight (8) below.

B. Price Adjustment

(1) In the event the sulphur content of the coke is less than 3% for 10 consecutive production drums of coke, then effective as of the beginning of the 1st production drum with a sulphur content of less than 3%, and continuing thereafter (so long as the sulphur content of the coke

continues for each production drum to be less than 3%), the price shall be increased by Four and 40/100ths Dollars ($4.40) per dry short ton.

C. Price Modification

The price as specified in subsection 4A above shall be firm for the six (6) months period from January 1, 1986 through June 30, 1986. Then, quarterly thereafter during the term of this Agreement either party may request modification of the contract price (subsection A above) and/or escalation basis (subsection B above) of the coke to be produced and sold during any price period, by notifying the other party in writing not less than thirty (30) days prior to the beginning of the price period in which the price modification is to commence. If the parties are unable to agree upon a modified price five (5) days prior to that new price period, deliveries of coke during such new price period shall be at the prevailing contract price and either party may terminate this sales agreement by giving sixty (60) days' written notice prior to the end of such new price period. Additionally, in the event that this Agreement is terminated as provided in this subparagraph, then Buyer agrees that for a period of time not to exceed five (5) years from date of termination, Buyer will permit Seller to use Buyer's coke storage, handling and shipping facility in Corpus Christi, Texas. Seller agrees to pay Buyer /Buyer's actual cost of handling and loading as shown by proper documentation plus ten percent (10%).

5. Payment

Seller shall submit invoices to Buyer on or about the 1st and 16th days of each month for all deliveries of coke made since the last invoice (covering approximately 15 days) and payment (without discount) shall be made by the Buyer on the 6th and 21st days of each month (5 days from invoice date) or the first working day thereafter. Payment will be made by wire transfer. Such payments shall be made on the basis of the price which has been determined in accordance with this Agreement. If Buyer shall fail to make payment to Seller when it is due, such failure shall, at Seller's option, be deemed to be a breach of this entire Agreement and Seller may suspend the coke deliveries contemplated hereunder until such payment shall have been made or Seller may terminate this Agreement; provided further, however, that such termination (as opposed to suspension) shall not be permitted unless Buyer fails to make such payment within the ten (10) day period immediately following Buyer's receipt of written notice from Seller advising Buyer of such failure to make a timely payment. The foregoing right of Seller to suspend deliveries or terminate this Agreement for nonpayment when due shall be in addition to, and not in limitation of, any other legal remedy that Seller may have for such nonpayment.

6. Delivery

As the coke is produced, Seller shall make the coke available at the Seller's Corpus Christi Plant for handling by front-end loaders which are provided by Buyer. Buyer shall remove all coke from the Seller's coke pad before the next coke drum is drained and cut. The removal period shall begin from the time Champlin's safe work permit to remove coke is issued. Title to the coke and risk of loss shall pass from Seller to Buyer as the coke is loaded into trucks provided by Buyer.

7. Storage

Seller shall, at its sole cost and expense, make available at Seller's option, an emergency coke surge pile which shall provide storage for not more than 10,000 tons of coke to be available hereunder. Buyer shall arrange for the movement of the coke from the refinery premises on a schedule consistent with Seller's rate of production and the coke storage capacity at the Refinery. Buyer assumes the obligation to timely remove, as contemplated hereunder, the coke from the coke pad, the emergency surge pile and away from the Refinery premises. Should Buyer fail to ratably lift the coke thus forcing the Seller to incur additional handling and storage costs which will include but not be limited to removal of the coke from the coke pad to the surge pile, then these costs shall be borne exclusively by the Buyer.

8. Weight

All coke shall be weighed at the delivery point by Seller's truck scale or a suitable alternate method.

9. Moisture

The moisture content of the coke shall be determined by tests performed by the Seller's laboratory using such sampling and testing methods as Seller and Buyer may mutually agree upon. At any time, the parties may agree upon an assumed moisture content of the coke, at which time, testing for moisture content may be suspended. For the period the assumption is in effect the moisture content, if any, by weight, will be subtracted from the weight of the delivered coke to determine the number of dry, short tons delivered.

10. Force Majeure

A. Delay in performance or non-performance of any obligation contained herein (other than an obligation to pay money) shall be excused to the extent such delay or non-performance is caused by force majeure. Breakdown of Buyer's equipment is not a force majeure event.

B. For purposes of this Contract force majeure shall mean any cause or agency which is beyond the reasonable control of a party including, without limitation, breakdown of machinery or equipment, fire, flood, sabotage, shipwreck, embargo, strike, explosion, labor trouble, accident, riot, acts of governmental authority (including, without limitation acts based on laws or regulations now in existence as well as those enacted in the future), acts of God, and delays or failure in obtaining raw materials, supply, equipment or transportation.

C. A party affected by or claiming force majeure shall promptly notify the other, explaining the nature and expected duration thereof, and shall act diligently to remedy the interruption or delay if it is reasonably capable of being remedied. This requirement of diligence shall not require a party to compromise strikes or labor controversies by acceding to demands it believes unreasonable.

11. <u>Delay in Performance</u>

In the event Buyer should fail to pick up Seller's coke production (as set forth herein), then Seller may make arrangements to sell such production to others on such terms and conditions as Seller, in its sole discretion, deems reasonable. A failure by Buyer shall be deemed to have occurred when Buyer fails to pick up any coke for two (2) consecutive coke productions or when five production days of coke shall remain on Seller's property. Unless Buyer's failure to pick up Seller's coke production is due to a condition described in Paragraph 10 herein, Buyer shall pay

Seller all costs incurred by Seller in storing and disposing of the coke. Costs incurred by Seller shall be construed as all the actual costs incurred in making such coke sale, including, but not limited to, storage, transportation, handling, administrative and taxes, plus the amount, if any, by which the contract price set forth herein exceeds the sales price which is secured by Seller in such subsequent sale.

12. Disclaimer of Warranty

SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE nor any other warranty of any kind, express or implied, except that Seller warrants title to such coke and that it has the right to sell the same.

13. Assignment

This Agreement shall not be assigned in whole or in part by either party or by operation of law in any manner whatsoever (including, but not limited to, voluntary bankruptcy, receivership, dissolution, or liquidation) without the other party's written consent; except that either party may assign this Agreement to any parent company or wholly owned subsidiary thereof or any affiliated company whose voting stock is wholly owned by a parent or subsidiary corporation of such party; provided further, however, an assignment of this Agreement shall not relieve the assigning party from liability to the non-assigning party for any non-performance hereunder. Without waiver of the foregoing, this

Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

14. Taxes

In addition to the prices herein provided, Buyer shall pay Seller an amount equal to any and all taxes (except state or federal income taxes or franchise taxes), excises, duties, charges and inspection or other fees, and any and all increases thereof which may now or hereafter be imposed by any domestic or foreign governmental authority or agency on the sale, use or handling of the coke product covered by this Agreement. However, if the amount of such taxes, excises, duties, charges, inspection or other fees shall, in the opinion of the Buyer, become so great as to seriously interfere with the Buyer's ability to profitably market the coke described herein, Buyer may notify Seller in writing of all the facts concerned with said increase, whereupon both parties will meet within 30 days of the date of receipt by the Seller of such notice to discuss in good faith, modification of the terms of this Agreement. Buyer shall furnish Seller with satisfactory exemption certificates where exemption from taxes or other charges is claimed by Buyer.

15. Custom Drawbacks

With respect to any coke sold hereunder that is exported from the United States, any "customs drawback" privileges, or their equivalent, which may be available are and shall be exclusively the right of Seller, and Seller shall be entitled to retain any "customs drawback" recovered. Buyer agrees to fully cooperate with Seller in recovering such "customs drawback" and Buyer shall timely furnish Seller with documentation in support of such "customs drawback" as may be required by United States governmental departments having jurisdiction thereover.

16. Plant Utilization

It is recognized that the coke sold hereunder is a by-product of Seller's refining operations and will be available only to the extent the refinery cokers operate. Buyer understands and agrees that Seller does not covenant to operate the cokers at all times but Seller does agree to give Buyer such notice as Seller has of any scheduled shutdown of the cokers.

17. Compliance with Environmental Matters

Buyer and Seller agree to use their best efforts to comply with any federal, state and/or local laws or regulations pertaining to environmental matters in the performance of their respective obligations under this Agreement. Seller shall be responsible for the cost of the equipment required in the manufacture of coke and for the removal of same from the coke stills. Buyer shall be responsible for the cost of the equipment required for the loading and hauling of coke produced by Seller and the moving of the same coke from the coke pad to the emergency surge pile. Seller and Buyer shall each make reasonable accommodations to the other in their procedures to assist each other in remaining in compliance with said laws and/or regulations.

18. Compliance with Seller's Plant Rules

Buyer agrees that its officers, employees, agents, subcontractors and others entering Seller's plant on Buyer's behalf will comply with Seller's safety, security, access and work practices, rules and regulations, as they now exist or as they may hereafter be modified by Seller for its West Plant. Buyer agrees that Seller may eject or bar access to any individual who fails to comply with the aforesaid rules and regulations. Buyer acknowledges that Seller has the right to inspect all vehicles and their contents that may enter Seller's West Plant, and Buyer further agrees to comply with all federal, state and local safety rules and regulations, as is stated in Paragraph 20 herein.

19. Indemnity and Insurance

A. Buyer agrees to defend, indemnify and hold Seller harmless from any loss, costs, claims or expenses arising from any claim, demand or legal action for:

a. personal injury or property damages allegedly arising out of Buyer's employee's or its agent's handling and removal of the coke from Seller's premises, or,

CH/W-002715

b. personal injury or property damages allegedly arising out of Buyer's sale of the coke or further processing of same, or,

c. any Workmen's Compensation or Employer's Liability claim, or

d. any other claim which arises out of or relates to Buyer's performance under this contract unless said claim is caused by the sole negligence or willful misconduct of Seller's agents or employees.

B. Buyer agrees to maintain such insurance as may be reasonably required to fulfill its responsibilities under this Agreement. At the minimum Buyer agrees to maintain the insurance coverages set forth in Exhibit A attached hereto and incorporated herein with insurance companies satisfactory to Seller. Buyer will provide Seller with copies of such policies or certificates of insurance, naming Seller as an additional insured where appropriate. Buyer will require its insurance carrier(s) to provide Seller at least 30 days' prior notice of the cancellation or termination of any insurance coverage.

20. <u>Safety Precautions</u>

Buyer agrees, while maintaining its independent contractor status, to follow the guidelines below:

(A) Guidelines to be observed when working within a Champlin facility, lease or offshore lease/tract.

1. Work should not begin until a mutually agreeable method of operation has been established.

2. Buyers/Contractors should conduct themselves so as not to constitute a hazard to either Champlin employees or property.

3. Champlin may, at its option, inspect job sites to ascertain that safety practices for the protection of property and personnel are in accordance with applicable laws and regulations as well as Champlin's safety policies. Such inspections will not constitute an acceptance of the Contractor's practices nor will they relieve the Contractor of responsibility for the safety and health of its employees.

4. Buyers/Contractors will comply with all applicable Federal, State and local regulations, including those laws and regulations promulgated under the Occupational Safety and Health Act, and accepted industry safe work practices (API, ANSI, NSC, etc.)

5. Buyers/Contractors shall be advised of the extraordinary (unique) hazards of Champlin operations, if any, and environments that may be encountered so that

appropriate precautions can be taken. Such information shall be given via advanced briefings.

6. Champlin requires the Buyer/Contractor to protect Champlin's employees and property, and to take every necessary precaution for the safety and health of its own employees when performing work for Champlin.

7. Champlin may stop or suspend the work in the event Buyer/Contractor does not comply with any request or instructions with regard to safework requirements.

8. Buyer/Contractor will report, through appropriate supervisory channels all serious injuries incurred within the scope of its contract with Champlin. Serious injuries are defined as those designated as "recordable" by OSHA regulations as well as any which necessitate a trip to a hospital or clinic.

9. Buyer/Contractor will immediately report, through appropriate supervisory channels, any fire, explosion, or other property damage, or the release of leakage of toxic substances, etc. In the event of such occurrences, the area involved will be secured and left "as is", and Buyer/Contractor will immediately cease all activities, except emergency activities until Champlin's investigation is completed and Champlin's representative advised Contractor that it may resume its work.

10. Buyer/Contractor shall have apprcpriate and/or required safety equipment for its job before commencing work.

11. Buyer/Contractor is responsible for providing the necessary training in the use and care of all applicable personal protective equipment. Champlin may at its discretion, require proof of such training.

12. Buyer/Contractor will ensure that all of its employees are provided Personal Protective Equipment as required prior to the start of work for Champlin. This equipment will be worn at all times where and when required by regulation or industry practice and as designated by the Company representative, and includes but is not limited to the following:

    a. Head Protection - ANSI approved hard hats with suspension.

    b. Safety Glasses - When required, shall be ANSI approved. If contact lenses are required by an employee because of vision problems uncorrectable by safety glasses, such employee will be required to wear safety goggles in all operating areas. For operations such as welding, chipping, grinding, etc., additional appropriate eye protection (goggles or full face shield) is required.

    c. Safety shoes - When required, are to be ANSI approved, or equivalent. Cloth, nylon, or canvas type "tennis" or "jogging" shoes are prohibited.

d. Hearing Protection - Areas that require hearing protection should be posted. Hearing protection will be that having a dBA reduction rating sufficient to reduce noise levels below 85dBA. Buyer/Contractor equipment used on Champlin property will be monitored by the Contractor for noise levels, and, if above 85dBA, will be posted.

e. Offshore and dockside operations may require employees to wear buoyant work vests and to have immediate access to Coast Guard approved life jackets.

13. Buyer/Contractor further agrees while within an offshore Champlin lease to observe the requirements of Champlin's General Welding, Burning and Hot Tapping Plan as filed with and approved by MMS.

14. If requested by the Company Representative, any employees of Buyer/Contractor, any subcontractor or employee of subcontractor who violates any safety measures may be removed from the job and forbidden to engage in the work contemplated under this Contract.

(A) <u>Alcohol</u>

1. The unauthorized use or possession of alcoholic beverages in or on Company property or being under the influence of alcohol while acting within the scope of this contract is prohibited.

2. Buyer/Contractor is responsible to inform its supervisors and any subcontractor of its responsibilities in these regards. Any breach of this safety covenant will be grounds for immediate termination of this Contract.

3. Buyer/Contractor is required to complete Exhibit B entitled "Notice to Contractor, Alcohol" as part of proper execution of this contract.

4. Entering upon or leaving Champlin Petroleum property shall constitute consent to a search of the person and his or her personal effects.

5. Any person who is found in violation of this rule or who refuses to permit an inspection shall be removed and barred from Champlin Petroleum Company property.

(c) <u>Prohibited Drugs</u>

1. The use, possession, transfer or storage of prohibited drugs, or drug paraphernalia, on Champlin property or leases is strictly prohibited. Further, no employee shall report to work under the influence of prohibited drugs. Compliance, including consent to searches is a condition of this contract.

2. Buyer/Contractor is responsible to inform its supervisors and any subcontractor of its responsibilities in these regards. Any breach of this safety covenant will be grounds for immediate termination of this Contract.

3. Buyer/Contractor is required to complete Exhibit C entitled "Notice to Contractor, Prohibited Drugs" as part of proper execution of this Contract.

4. Entering upon or leaving Champlin Petroleum property shall constitute consent to a search of the person and his or her personal effects.

5. Any person who is found in violation of this rule or who refuses to permit an inspection shall be removed and barred from Champlin Petroleum Company property.

21. <u>Environmental Precautions</u>

(A) Buyer/Contractor agrees its employees and subcontractors shall conduct themselves in an environmentally acceptable manner including, but not limited to, compliance with all applicable federal, state and local environmental statutes, regulations, rules and ordinances.

(B) Buyer/Contractor acknowledges that its responsibilities in the event of any spill or discharge, regardless of fault or cause, shall include, but not be limited to, undertaking immediate measures reasonably necessary to prevent or mitigate any resulting pollution damage and shall further immediately report any such spill or discharge, regardless of size or duration, to Champlin's designated representative as stipulated in its Spill Prevention Control and Counter Measure (SPCC) Plan and/or Oil Spill Contingency Plan for

OCS Tracts. The location of such plan shall be conspicuously posted at the facility. Buyer/Contractor acknowledges by execution of this document that it will determine the location of the Plan and agrees to inform its on-site employees and subcontractors of said location and Plan requirements.

(C) Buyer/Contractor further acknowledges that intervention by authorized Champlin personnel into Buyer/Contractor's activities covered under the terms of the Agreement between the parties may be necessary and Buyer/Contractor acknowledges that such intervention will in no way alter or amend the responsibility of Buyer/Contractor of the rights, duties and obligations of the parties under the terms and provisions of the Agreement or the legal relationship created thereby.

22. Entire Contract

This contract constitutes the entire agreement between the parties in respect to the subject matter hereof. No statement of agreement, oral or written, made prior to or at the signing of this agreement, shall vary or modify the written terms hereof; and neither party shall claim any amendment, modification or release from any provisions hereof by mutual agreement unless such agreement is in writing and signed by the parties hereto.

23. Applicable Law

This Agreement is to be governed by and construed under the laws of the State of Texas.

24. Notices

All notices given under this Agreement shall be in writing and may be served personally upon the party to which directed, or by telegraph, or by depositing the notice in the United States first-class mail, postage prepaid, addressed to the party to be notified at such party's address as shown in this Agreement. The date upon which a notice is so mailed shall be considered as the date of notice. Until further notice, Seller's and Buyer's addresses are as follows:

SELLER: Champlin Petroleum Company
P. O. Box 7
Fort Worth, Texas 76101
Attention: Manager, Specialty Products and Industrial Sales

BUYER: Koch Carbon, Inc.
P. O. Box 2219
Wichita, Kansas 67201
Attention: Executive Vice President - Supply

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

SELLER: CHAMPLIN PETROLEUM COMPANY

By: ______________________

Title: ______________________

BUYER: KOCH CARBON, INC.

By: ______________________

Title: ______________________

EXHIBIT A

1. Workers' Compensation in accordance with the statutory requirements, including insurance covering liability under the Longshoremen's and Harbor Workers' Act and the Jones Act, if applicable, of the state, province or country having jurisdiction over Buyer';s and its Sub-Contractor's employees assigned to the job-site and who are engaged in the Work at or from the job site, with Employer's Liability of not less than One Hundred Thousand Dollars ($100,000.00) each occurrence. Such insurance shall contain a waiver of subrogation against Seller.

2. Comprehensive General Bodily Injury and Property Damage Liability for risks at or from the job site, including coverage for XCU exposures on the premises, Broad Form Contractual Liability, Broad Form Property Damage and Completed Operations coverage. Such insurance shall be provided with minimum limits of One Hundred Thousand Dollars ($100,000.00) each person, Three Hundred Thousand Dollars ($300,000.00) each occurrence for bodily injury and One Hundred Thousand Dollars ($100,000.00) each occurrence for property damage.

3. Comprehensive Automobile Liability coverage, including overage for owned, non-owned and hired vehicles, with minimum limits of One Hundred Thousand Dollars ($100,000.00) each person, Three Hundred Thousand Dollars ($300,000.00) each occurrence for bodily injury and Fifty Thousand Dollars ($50,000.00) each occurrence for property damage.

4. Excess Liability Insurance with Limits of Five Million Dollars ($5,000,000.00) excess of and as broad in coverage as the underlying insurance.

5. Any physical damage insurance on Buyer's or its subcontractor's equipment shall include a waiver of subrogation against Owner.