

**CITY OF LOS ANGELES HARBOR DEPARTMENT
Port of Los Angeles**

NONEXCLUSIVE BERTH ASSIGNMENT APPLICATION AND AGREEMENT

APPLICATION

Chief Wharfinger
Port of Los Angeles
PO Box 151
San Pedro, CA 90733-0151

Application is hereby made for a Berth Assignment described as follows:

Dates Requested - Commencing on: _____, 20__ and Expiring on: _____, 20__
(month and day) (year) (month and day) (year)

Applicant: _____

Physical Address: _____

Billing Address: _____

Classification of Berth Assignment (check one):

- Preferential Assignment (the priority right to use a certain berth, wharf or facility, including such improvements and areas as are designated)

- Secondary Assignment (a subordinate right to use a preferentially assigned berth, wharf or facility, including such improvements and areas as are designated, subject to the prior rights of a preferential assignee with whom such secondary assignee must share by agreement the costs and expenses incidental to the assignment)

- Temporary Assignment (a temporary permission granted to use a certain berth, wharf or facility, including such improvements and areas as are designated)

Berth No. Desired: _____ Land Area Desired (attach map): _____

Reason for Berth Assignment: _____

Shed Area Required (sq. ft.): _____ Number of Days: _____

Open Wharf Area Required (sq. ft.): _____ Number of Days: _____

Alterations Required (if any): _____

Vessel Name: _____ Flag: _____ Trade: _____

Draft: _____ Overall Length: _____ Beam: _____

Agent or Owner: _____

Billing Address: _____

Notes:

1. If alterations to the premises are required, then the Application must be accompanied by a complete Application for Port Permits (APP) available at: http://www.portoflosangeles.org/business/department_forms_APP.asp.
2. If multiple vessels will call at the premises, then the Application must be accompanied by a complete Supplemental Attachment to Nonexclusive Berth Assignment Application and Agreement listing all vessel names, flags, trades, drafts, overall lengths, beams, agents or owners, and billing addresses.
3. The Application must be accompanied by a completed and executed Harbor Department form entitled Agent's Statement of Responsibility for each vessel.
4. The attached Agreement will be processed by the Harbor Department upon receipt of the Application and Agent's Statement of Responsibility form(s) only if the Application and Agent's Statement of Responsibility form(s) are accepted and approved by the Executive Director.

AGREEMENT

Berth Assignment No. _____

Berth(s) _____

The Executive Director of the Harbor Department ("Executive Director") of the City of Los Angeles ("City") hereby assigns to: _____
whose address is: _____

("Assignee") to occupy and use the Premises designated below, within the Harbor District owned or under the control of City acting through its Board of Harbor Commissioners ("Board"). This Berth Assignment (also "Agreement") shall be nonexclusive and shall be subject to the Charter of the City; the Port of Los Angeles Tariff No. 4 including all changes, additions, amendments and supplements thereto, or any subsequent and superseding Tariff ("Tariff"); all ordinances of the City; all orders, rules and regulations of the Board; and the following terms, covenants and conditions:

1. Classification. This Berth Assignment is classified and described as preferential, secondary, or temporary consistent with the Assignee's request in the accompanying Application which is incorporated herein and made part of this Agreement.

2. Premises. Assignee is permitted to use Berth(s) No. _____, wharf or facility, including such improvements and areas described as: _____

as delineated and more particularly described on Exhibit A ("Premises").

3. Permitted Use. The Premises shall be used for the purpose of docking vessels owned, operated, or represented by Assignee, for the embarking and disembarking of passengers and their baggage, and the assembling and distributing of the cargoes of such vessels, over, through or upon such Premises ("Permitted Use"); provided, however, that the rights hereby granted to use the Premises for said purposes shall not be exclusive, and whenever the Premises, or any part thereof, are not required in whole or in part for the use of Assignee for the stated purposes, the Executive Director shall have the right to and may make other assignments to any other person, firm or corporation to use such Premises, or any part thereof, as provided in the Tariff. Assignee shall not use the Premises in any manner, even if the use is a Permitted Use, that will cause cancellation of any insurance policy covering the Premises or adjacent premises; provided, however, Assignee may, in City's sole discretion, remain if it pays the increase in City's insurance costs caused by its operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Assignee to be or remain, on the Premises, and Assignee shall prevent any such material or matter from being or accumulating upon the Premises. Assignee further agrees not to keep on the Premises, or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the Premises or any structure erected thereon.

4. Effective and Termination Dates. This Berth Assignment shall commence and become effective on:

Date: _____, 20____ ("Effective Date")
and shall terminate on:

Date: _____, 20____ ("Termination Date")

Termination Date shall also mean the date of termination by revocation as set forth in Section 5; by forfeiture as set forth in Section 6; by termination as set forth in Sections 22, 23 or 24; or by operation of law or any other reason.

5. Assignment Revocable. This Berth Assignment shall be revocable at any time prior to the Termination Date by Executive Director, at his or her sole option, upon the giving of at least thirty (30) days' written notice to Assignee stating the date upon which this Berth Assignment shall terminate, provided, however, that if this assignment is designated in the Application as a temporary assignment, it shall be revocable by Executive Director, at his or her sole option, at any time upon written notice. The right of Executive Director to revoke this Berth Assignment is and shall remain unconditional. Neither City, nor any Board member, officer or employee thereof, shall be liable in any manner to Assignee because of such revocation.

6. Forfeiture. Upon the neglect, failure or refusal by Assignee to comply with any of the terms or conditions of this Berth Assignment as determined by the Executive Director in his or her sole discretion, the Executive Director may, by written notice to Assignee, declare this assignment immediately forfeited, and may thereupon exclude Assignee and all other persons, firms or corporations from any further use of the Premises under this assignment.

7. Premises Subject to Tariff. Assignee accepts the Premises and shall undertake the Permitted Use set forth in Section 3 subject to each and every of the terms and conditions provided herein, and to each and every of the rates, terms and conditions of the Tariff, as applicable to Premises and/or the Permitted Use. Assignee represents and warrants that it has received, read and understands the rates, terms and conditions of the Tariff and covenants that, at all times during the term of this Berth Assignment, it shall maintain a complete and current copy of the Tariff at the address set forth in Section 25. Except as otherwise set forth in this Berth Assignment, Assignee is contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. City in its sole and absolute discretion shall determine if a conflict exists between a provision of this Berth Assignment and a Tariff provision. In the event of such conflict, this Berth Assignment shall at all times prevail.

8. Compensation.

(a) Assignee agrees to furnish all statements, manifests, reports and other supporting documents and to pay the total amount of all charges accruing at the Premises pursuant to, and at or before the time provided in, the Tariff and subject to any and all Agent's Statement of Responsibility forms submitted and accepted by the Executive Director during the term of this Agreement.

(b) If Assignee has been placed on the Credit List in accordance with the Tariff, Assignee shall within fifteen (15) calendar days of the departure of each vessel from any wharf deliver to the Executive Director complete and verifiable copies of the vessel's manifest and/or Bills of Lading, complete and certified copies of container reports and all other information respecting such vessel and merchandise as the Board may require. In lieu of furnishing the above documents, cargo information and container reports may be transmitted electronically directly to the Harbor Department through preapproved contractual Electronic Data Interchange procedures.

(c) Where the departure of a vessel is not involved, the statements, manifests, reports and other supporting documents showing all charges which shall have accrued at the Premises for all wharf demurrage, storage and other charges, if any, during the preceding calendar month shall be delivered to the Executive Director by the tenth (10th) calendar day of each month.

9. Records and Reports. Assignee shall keep full and accurate books, records and accounts relating to its operations on the Premises. City shall have the right and privilege, through its representatives, at all reasonable times and on reasonable notice, to inspect such books, records and accounts in order to verify the accuracy of the sums due, owing and paid to City hereunder. Assignee

agrees that such books, records and accounts shall be made available to City at a location within the City of Los Angeles. City shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected. Assignee shall preserve all such books, records and accounts for the entire term of this Agreement and for a minimum of five (5) years beyond its termination.

10. Labor and Equipment. Assignee shall, at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels at the Premises, and shall provide, at its own cost and expense, such equipment and employ such persons as it may require for the handling of passengers, goods, wares and merchandise thereat; provided, however, that nothing contained herein shall prevent Assignee from using such equipment as may be installed by City at the Premises upon the payment to City of the charges fixed therefor.

11. Utility Charges. Unless otherwise provided for herein, Assignee shall pay all charges for services furnished to the Premises or used in connection with its occupancy, including, but not limited to, heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges, and meter rentals required by the supplier of any such service, including City.

12. Premises Satisfactory to Assignee/Required Modifications. Assignee has inspected the Premises and agrees that they are suitable for the Permitted Use. No officer or employee of City has made any representation or warranty with respect to the Premises, except as described in writing and attached hereto as an addendum, and in entering into this Berth Assignment, Assignee agrees it relies only on the provisions of the Berth Assignment. Any modification, improvement, or addition to the Premises and any equipment installation or removal required by the Fire Department, Department of Building and Safety, South Coast Air Quality Management District, Regional Water Quality Control Board, U.S. Coast Guard, Environmental Protection Agency, or any other agency in connection with Assignee's operations, shall be constructed, installed, or removed at Assignee's sole expense. Assignee shall obtain a General Permit from the office of the Chief Harbor Engineer, Engineering Division, of the Harbor Department ("Harbor Engineer") and shall comply with the requirements of Section 13 before making any modifications to the Premises.

13. Alterations on Premises. Assignee shall not construct on or alter ("Alteration") the Premises, including a change in the grade, without first obtaining City's written approval. Assignee shall submit to City a complete Application for Port Permits that attaches a complete set of drawings, plans and specifications reflecting the proposed Alteration. Where applicable, the drawings, plans and specifications must be prepared and stamped by a licensed engineer registered in the State of California. All projects in the Harbor District are subject to review by the Harbor Department pursuant to the California Environmental Quality Act (CEQA) and certified Port Master Plan. City's Harbor Engineer shall have the right to reject or order reasonable changes in said drawings, plans and specifications. Assignee, at its own expense, shall obtain all permits necessary for such construction. All construction by Assignee pursuant to this Berth Assignment shall be at Assignee's sole expense. Assignee shall keep the Premises free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto. Assignee shall give written notice to Harbor Engineer, in advance, of the date it will commence any Alteration. Immediately upon the completion of the construction, Assignee shall notify Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with Harbor Engineer, in a form acceptable to Harbor Engineer, a set of "as built" plans for such construction.

14. Signs. Assignee shall not erect or display, or permit to be erected or displayed, on the Premises any signs or advertising matter of any kind without first obtaining the written consent of Executive Director. If Assignee obtains consent, it shall comply with the requirements of Section 13. Assignee shall post, erect and maintain on the Premises such signs as Executive Director may direct.

15. Lighting. Assignee acknowledges that the Premises may lack adequate lighting for a Permitted Use and that Assignee is responsible for installing temporary or permanent lighting as it may deem necessary to perform any labor, or to protect any property stored or located on the Premises, or to otherwise use the Premises for any Permitted Use. Assignee shall comply with the requirements of Section 13 prior to installing any lighting. Any lighting installed shall meet Illuminating Engineering Society / American National Standards Institute (IES/ANSI) standards.

16. Immediate Access to Repair/Maintain Premises. Assignee is aware that the City's Department of Water & Power, other utility, or other maintenance or service from or on behalf of City, may need to service or repair certain facilities on the Premises. If such repair is necessary, Assignee agrees to relocate, at its expense, all of its cargo equipment or personal property to provide such personnel adequate access. Assignee agrees to complete such relocation within twenty-four (24) hours of receiving notice from City except in case of emergency. Assignee agrees neither the department servicing the Premises nor City shall be responsible for any loss Assignee may suffer as a result of such maintenance or repair.

17. Assignee's Environmental Obligations.

(a) At all times in its use and occupancy of the Premises and its conduct of operations thereon, Assignee, at Assignee's sole cost and expense, shall comply with all applicable federal, state, county, City or government agency laws, statutes, ordinances, standards, codes (including all building codes) rules, requirements or orders in effect now or hereafter in effect ("Applicable Laws") pertaining to the use or condition of the Premises and/or Assignee's operations and conduct of its business. Applicable Laws shall include, but not be limited to, all environmental laws and regulations in effect now or hereafter in effect including:

(i) The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 USCS §§ 9601 *et seq.*) in its present or successor form and its implementing regulations;

(ii) The Resource Conservation and Recovery Act and Hazardous and Solid Waste Amendments of 1984 ("RCRA") (42 USCS §§ 6901 *et seq.*) in its present or successor form and its implementing regulations;

(iii) The federal Clean Water Act (33 USCS §§ 1251 *et seq.*) in its present or successor form and its implementing regulations;

(iv) The California Porter-Cologne Water Quality Control Act (California Water Code §§ 13020 *et seq.*) in its present or successor form and its implementing regulations;

(v) The federal Clean Air Act (42 USCS §§ 7401 *et seq.*) in its present or successor form and its implementing regulations;

(vi) The California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) in its present or successor form and its implementing regulations;

(vii) The California Lewis-Presley Air Quality Management Act of 1976 (California Health and Safety Code §§ 40400 *et seq.*) in its present or successor form and its implementing regulations; and

(viii) Any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of

conduct) now or hereinafter in effect which concerns Environmentally Regulated Material (defined below), the Premises and/or Assignee's use and/or occupancy thereof.

(b) It is the parties' intent that Assignee will make, at Assignee's sole cost and expense, any and all alterations, improvements, and changes, whether structural or nonstructural, that are required by Applicable Laws. In addition, Assignee shall comply immediately with all applicable environmental policies, rules and directives of City's Harbor Department ("Port Environmental Policies"). This Berth Assignment shall be construed in accordance with California law.

(c) Assignee shall not cause or permit any Environmentally Regulated Material (defined below) to be generated, brought onto, handled, used, stored, transported from, received or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the Premises except for limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material and except as permitted, required or necessary under Section 3, if any. Assignee shall handle all such Environmentally Regulated Material in strict compliance with Applicable Laws in effect during Assignee's occupancy. The term "Environmentally Regulated Material" shall mean:

- (i) Any "hazardous substance" as that term is defined in CERCLA;
- (ii) "Hazardous waste" as that term is defined in the RCRA;
- (iii) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous or toxic waste, substance or material, now or hereinafter in effect);
- (iv) Radioactive material, including any source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954 (42 USCS §§ 2011 *et seq.*) in its present or successor form;
- (v) Asbestos in any form or condition;
- (vi) Polychlorinated biphenyls ("PCBs") and substances or compound containing PCBs; and
- (vii) Petroleum products.

(d) Assignee shall remediate or cause the remediation of any spill, discharge or release of any Environmental Regulated Material that occurs in, on, under or about the Premises ("Contamination"), whether caused by Assignee or any third-party during Assignee's occupancy, including Contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air or of adjacent premises (including soil, sediment, groundwater or air) and including Contamination that is a considered a nuisance under Applicable Laws. Remediation shall be to the satisfaction of City, and the requirements of the applicable governmental agencies including the Regional Water Quality Control Board ("RWQCB"), by removing or effecting the removal of all Contamination including but not limited to contaminated soil, water, groundwater, sediment or other material it may place or cause to be placed on site such that no encumbrances, such as deed or land use restrictions, be imposed on the Premises as a result of such Contamination. In fulfilling the obligations under this Section, Assignee shall also comply with any other conditions reasonably imposed by the City. If Assignee knows or has reasonable cause to believe that Contamination has occurred in, on, under or about the Premises, Assignee shall immediately give written notice to City.

(e) Assignee bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally

Regulated Material including Contamination, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the Premises, on the owner of any improvements on the Premises, on the user of the Premises, or on the user of any improvements on the Premises. For purposes of CERCLA, and any and all other Applicable Laws, Assignee shall be considered the owner and operator. Assignee agrees that any claims, damages, fines or other penalties asserted against or levied on City and/or Assignee as a result of noncompliance with any Applicable Laws shall be the sole responsibility of Assignee and that Assignee shall indemnify and hold City harmless from any and all such claims, damages, fines, penalties, and/or judgments, as well as any costs expended to defend against such claims, damages, fines and penalties and/or judgments, including attorneys' and experts' fees. City, at its sole option, may pay such claims, damages, fines, penalties and/or judgments resulting from Assignee's noncompliance with any of the aforementioned authorities, and Assignee shall indemnify and reimburse City for any such payments.

(f) In discharging Assignee's obligations under this Berth Assignment, if Assignee disposes of any Contamination, within thirty (30) days of Assignee's receipt of original documents, Assignee shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles, the Port of Los Angeles or the City's Harbor Department shall not appear on any manifest document as a generator of such material.

(g) In discharging its obligations under this Section, Assignee shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory of which City shall approve in writing. By signing this Berth Assignment, Assignee hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, tests results, and data gathered. As used in this Section, "Assignee" includes agents, employees, contractors, subcontractors, and/or invitees of the Assignee.

(h) Assignee shall implement Best Management Practices (BMPs) in order to reduce the potential for pollutants to enter Harbor waters, as follows:

(i) Facility Operations: Clean and maintain facility regularly. Use dry cleaning methods whenever possible; avoid washing areas down. Do not allow sweepings or sediment to enter the storm drain or the Harbor. Wash water shall be collected for disposal or directed to a clarifier. Do not encourage scavengers. Do not feed birds, feral cats, sea lions, or other scavengers. Recycle whenever possible.

(ii) Maintenance Operations: Use drip pans to prevent any drips or leaks from contacting the ground during maintenance and fueling operations. Clean spills or drips immediately using dry methods. Use spill cleanup kits to confine or contain spills. Do not hose down equipment or allow process water to enter the storm drain or the Harbor. Place tarps beneath maintenance and repair operations to prevent materials such as paint chips and metals from contacting the ground.

(iii) Material and Waste Handling and Storage: Employees responsible for waste management shall be trained on handling and disposal procedures. Store all hazardous and universal waste in accordance with all Federal, State and Local regulations. Store all materials and waste inside and in secondary containment. If stored outside, store only in designated, covered and contained areas. Store waste in covered, leak proof, labeled containers. Lids shall be kept closed on all outdoor containers including dumpsters. Store all oily products (e.g. engines), batteries, tires, and metal off the ground and under cover when stored outdoors.

(i) Except as may be otherwise provided in this Berth Assignment, Assignee's obligations in this Section shall survive the Termination Date of this Berth Assignment.

18. Indemnity.

(a) Except as may arise from the sole negligence or willful misconduct of City, Assignee shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the City, including but not limited to costs of experts and consultants), for death of or injury to persons or damage to property including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused directly or indirectly by:

(i) Any dangerous, hazardous, unsafe or defective condition of, in or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Assignee, its officers, agents, employees, sublicensees, or invitees;

(ii) Any operation conducted upon or any use or occupation of the Premises by Assignee, its officers, agents, employees, sublicensees, or invitees under or pursuant to the provisions of this Berth Assignment or otherwise;

(iii) Any act, omission or negligence of Assignee, its officers, agents, employees, sublicensees, or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(iv) Any failure of Assignee, its officers, agents, employees, sublicensees, or invitees to comply with any of the terms or conditions of this Berth Assignment or any applicable laws; or

(v) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (i), (ii), (iii) and (iv) above, existing or conducted upon or arising from the use or occupation by Assignee, its officers, agents, employees, sublicensees, or invitees on any other premises within the Harbor District, as defined in the Charter of City.

(b) Assignee also agrees to indemnify City and pay for all damages or loss suffered by City and City's Harbor Department including, but not limited to, damage to or loss of property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in this Section. The term "persons" as used in this Section shall include, but not be limited to, officers and employees of Assignee.

(c) Assignee shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultants' fees, and experts' fees) which arise during or after the Berth Assignment term as a result of any Contamination of the Premises occurring during Assignee's occupancy. This indemnification of City by Assignee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency because of Contamination present in the soil or groundwater on or under the Premises.

(d) The obligations under this Section shall survive the Termination Date of this Berth Assignment and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

19. Insurance. Assignee shall procure and maintain at its expense and keep in force at all times during the term of this Berth Assignment the following insurance:

(a) Commercial general liability insurance or Marine General Liability, including contractual liability, and property damage insurance written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Assignee's normal limits of liability, but not less than One Million Dollars (\$1,000,000) for injury or death to one or more persons out of each accident or occurrence and One Million Dollars (\$1,000,000) for bodily injury and property damage for each occurrence / Two Million Dollars (\$2,000,000) general aggregate.

(b) In addition to and concurrently with the aforesaid insurance coverage, Assignee shall also procure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of Two Hundred Fifty Thousand Dollars (\$250,000.00), covering legal liability of Assignee for damage or destruction to the works, buildings and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board with waiver of subrogation in favor of Assignee so long as permitted by Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to Assignee at any time during the time of this Berth Assignment.

(c) Assignee shall also procure and maintain at its expense and keep in force at all times during the term of this Berth Assignment automobile insurance with limits of liability not less than One Million Dollars (\$1,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. This insurance shall cover all owned, non-owned and / or hired automobile.

(d) Limits for coverage required under Section 19(a)(b) and (c) above shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Assignee. The retention or self-insurance provided shall provide that any other insurance maintained by City's Harbor Department shall be excess of Assignee's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause.

(e) Where Assignee operates watercraft, liability coverage for such craft must be provided as follows:

(i) Hull and machinery coverage for the value of each vessel which will call at the Premises during the term of this Berth Assignment.

(ii) Protection and indemnity coverage with limits of Five Million Dollars (\$5,000,000) per occurrence for bodily injury, illness, death, loss of or damage to the property of another including masters and members of the vessel crew, Jones Act risks or equivalent thereto internationally. The City shall be named as an Additional Insured.

(iii) Vessel pollution liability to which it is agreed that the additional insured and cancellation notice provisions as required and described below must be included. Vessel Pollution Liability limits shall be equal to the Protection and Indemnity Limits. Pollution liability shall include coverage for bodily injury, including death and mental anguish, property damage, defense costs and cleanup costs as well as fines and penalties. Such coverage shall contain a defense of suits provision and a severability of interest clause.

(iv) If the Assignee is storing or carrying property insured under a Cargo policy, such policy shall insure the full value of said cargo. The policy shall provide for a waiver of Subrogation in favor of the City.

(f) Policies submitted pursuant to Section 19(a)(b)(c) and (e) above shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

(i) "Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, Board of Harbor Commissioners, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Berth Assignment No. _____, and under any amendments, modifications, extensions or renewals of said Berth Assignment regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District."

(ii) "The policy to which this endorsement is attached shall provide a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons to the City's Risk Manager."

(iii) "The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by the City is excess coverage."

(iv) "In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability."

(v) "Notice of occurrences or claims under the policy shall be made to the City's Risk Manager with copies to the Los Angeles City Attorney's Office."

(g) Assignee shall secure the payment of compensation to employees injured while performing work or labor necessary for and incidental to performance under this Berth Agreement in accordance with Section 3700 of the California Labor Code. Assignee shall file with the City one of the following:

(i) A certificate of consent to self-insure issued by the Director of Industrial Relations, State of California;

(ii) A certificate of Workers' Compensation insurance issued by an admitted carrier;
or

(iii) An exact copy or duplicate thereof of the policy certified by the Director or the insurer.

Such documents shall be filed prior to Assignee's occupancy of the Premises. Where Assignee has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act, Assignee shall furnish proof of such coverage to the City. It is suggested that Assignee consult its insurance professional of its choosing to determine whether its proposed operation methods will render its employees subject to coverage under such Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

- (h) All insurance procured by Assignee shall comply with the following:
- (i) Each insurance policy described above shall provide that it will not be cancelled or reduced in coverage until after City's Risk Manager has been given a 10-day notice of cancellation for nonpayment of premium and a 30-day notice of cancellation for any other reason.
 - (ii) Electronic submission is the required method of submitting Assignee's insurance documents. Track4LA[®] is the City's online insurance compliance system which is designed to be used by insurance brokers and agents to submit client insurance certificates directly to the City. Assignee's insurance broker or agent shall obtain access to Track4LA[®] at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on Assignee's behalf.
 - (iii) Prior to the expiration of each policy, Assignee shall show through submitting to Track4LA[®] that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA[®]. If Assignee neglects or fails to secure or maintain the required insurance, or if Assignee fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Assignee, obtain such insurance for Assignee.
 - (iv) Executive Director, at his or her discretion, based upon recommendation of the Risk Manager of City's Harbor Department, may request that Assignee increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Assignee.
 - (v) Assignee shall report in writing to Executive Director within fifteen (15) days after its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Fifty Thousand Dollars (\$50,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Assignee's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Use. Such report shall contain to the extent available: (1) the name and address of the persons involved; (2) a general statement as to the nature and extent of injury or damage; (3) the date and hour of occurrence; (4) the names and addresses of known witnesses; and (5) such other information as may be known to Assignee, its officers or managing agents.

20. No Assignments/Sublicenses/Transfers. No transfer of this Berth Assignment, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Assignee (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Assignee), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublicense, transfer, gift, hypothecation or grant of total or partial control, or any encumbrance of this Berth Assignment (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. "Transfer" also shall include the involvement of Assignee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not a formal assignment or hypothecation of this Berth Assignment or Assignee's assets, which involvement results in a reduction of the net worth of Assignee (defined as the net worth of Assignee, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Berth Assignment or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Assignee's assets in the hands of a receiver or trustee; or (2) a transfer by Assignee for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is an Assignee or of a general partner of an Assignee.

21. Assignee Name Change. Assignee shall notify City in writing within ten (10) days of making any changes to its name as set forth in the preamble of this Berth Assignment and shall provide City with all documents in connection with the change.

22. Transfer of Stock. If Assignee is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of Assignee is traded during any calendar year after filing its application for this Permit, Assignee shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of Assignee is listed on either the New York Stock Exchange, NASDAQ, or the NYSE Arca Options. If more than twenty-five percent (25%) of the Assignee's stock is transferred, whether by one or by means of successive transfers, regardless of whether Assignee is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of Section 20. Any such transfer shall void this Berth Assignment. Such a transfer is agreed to be a breach of this Berth Assignment which shall entitle the Executive Director to immediately terminate this Berth Assignment by giving written notice thereof.

23. Termination for Misrepresentations. This Berth Assignment is granted pursuant to the accompanying Application incorporated herein. If the Application or any of the attachments thereto contain any misstatement of fact which, in the judgment of Executive Director, affected his or her decision to grant said Berth Assignment, Executive Director may immediately terminate this Berth Assignment by giving written notice thereof.

24. Conflict of Interest. It is understood and agreed that the parties to this Berth Assignment have read and are aware of the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Berth Assignment. Notwithstanding any other provision of this Berth Assignment, it is further understood and agreed that if such a financial interest does exist at the inception of this Berth Assignment, City may immediately terminate this Berth Assignment by giving written notice thereof.

25. Notice. In all cases where written notice including the service of legal pleadings is to be given under this Berth Assignment, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid, or delivered to the Berth Assignment Premises. When given by mail, such notice shall be effective from the date of mailing. Unless changed by notice in writing from the respective parties, notice to the parties shall be as follows:

To the City: Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Attention: Director of Real Estate

with a copy to: Office of City Attorney—Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel

To the Assignee: _____

Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this Berth Assignment refer to calendar days unless otherwise specifically stated.

26. Construction of Agreement. This Berth Assignment shall not be construed against the party preparing it and shall be construed without regard to the identity of the person who drafted this Berth Assignment.

27. No Waiver. No waiver by either party at any time of any terms or conditions of this Berth Assignment shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of compensation by City shall not be deemed a waiver of any other breach by Assignee of any term or condition of this Berth Assignment other than the failure of Assignee to timely make the particular payment so accepted. No breach of a covenant, term or condition of this Berth Assignment will be deemed to have been waived by City unless the waiver is in writing and executed by City.

28. Joint and Several Obligations of Assignee. If more than one individual or entity comprises Assignee, the obligations imposed on each individual or entity that comprises Assignee under this Agreement shall be joint and several.

29. Nondiscrimination and Affirmative Action Provisions. Assignee agrees not to discriminate in its employment practices against any employee or applicant for employment because of such employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

30. Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Outreach Program. It is the policy of the City to provide minority business enterprises (MBEs), women's business enterprises (WBEs), and all other business enterprises (OBEs) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. The Assignee shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including MBEs, WBEs, and OBEs, have an equal opportunity to compete for and participate in any such participation opportunity which might be presented under this Berth Assignment.

31. Service Contractor Worker Retention Policy and Living Wage Policy Requirements. The Board adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 *et seq.* of the Los Angeles Administrative Code, as the policy of the City's Harbor Department. Further, Section 378 of the Los Angeles City Charter requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 *et seq.* of the Los Angeles Administrative Code. Assignee shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Berth Assignment and otherwise pursue legal remedies that may be available.

32. Wage and Earnings Assignment Orders / Notices of Assignments. The Assignee is obligated to fully comply with all applicable state and federal employment reporting requirements for the Assignee and/or its employees. The Assignee will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 *et seq.* of the California Family Code. The Assignee will maintain such compliance throughout the term of this Berth Assignment.

33. Equal Benefits Policy. The Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 *et seq.* of the Los Angeles Administrative Code, as a policy of the City's

Harbor Department. Assignee shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any agreement with Assignee and pursue any and all other legal remedies that may be available.

34. Wilmington Truck Route. It is recognized by both parties that Assignee may not directly control the trucks serving the Premises. However, Assignee will make its best effort to notify truck drivers, truck brokers and trucking companies, that trucks serving the Premises must confine their route to the designated Wilmington Truck Route of Alameda Street and Harry Bridges Boulevard; Figueroa Street from Harry Bridges Boulevard to "C" Street; and Anaheim Street east of Alameda Street.

35. Business Tax Registration Certificate. The City of Los Angeles Office of Finance requires the implementation and enforcement of Section 21.09 *et seq.* of the Los Angeles Municipal Code. This section provides that every person, other than a municipal employee, who engages in business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes.

36. Other Fees and Taxes. Assignee shall pay all taxes and assessments of whatever character levied upon or charged against the interest of Assignee, if any, created by this Agreement in the Premises or upon works, buildings, improvements or other property thereof, or upon Assignee's operations hereunder. Assignee shall also pay all license and permit fees required for the conduct of its operations hereunder.

37. State Tidelands Act. This Agreement, the Premises and Assignee's use and occupancy thereof shall at all times be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and Article VI of the Charter of the City of Los Angeles relating to such lands. Assignee shall not undertake any use of the Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions and reservations.

38. Attorneys' Fees. If either party brings an action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Berth Assignment, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to the recovery of its costs and reasonable attorneys' fees including the reasonable value of the services rendered by the Office of the City Attorney or in-house counsel of Assignee, if any.

39. Integrated Agreement. It is understood that this Berth Assignment supersedes and cancels any and all previous negotiations, arrangements, representations, agreements, negotiations and understandings, if any, between the parties and there are no oral agreements that affect any of the terms of this Berth Assignment.

40. Amendments. No provision of this Berth Assignment may be amended except by an agreement in writing signed by City and Assignee. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or other applicable law.

41. Governing Law and Venue. This Berth Assignment is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under the laws of the State of California without reference to choice of law rules. Any action or proceeding arising out of or related to this Berth Assignment shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California.

DATED: _____

CITY OF LOS ANGELES
HARBOR DEPARTMENT

By: _____
Executive Director

The undersigned Assignee hereby accepts the foregoing Berth Assignment and agrees to abide and be bound by and to observe each and every of the terms, covenants and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted, if any.

ASSIGNEE

DATED: _____

By: _____
Name and Title of Officer

Attest: _____
Name and Title of Officer

APPROVED AS TO FORM AND LEGALITY

_____, 20____
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By: _____
_____, Deputy/Assistant