



**THE PORT  
OF LOS ANGELES**  
Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: JANUARY 11, 2012**

**FROM: REAL ESTATE**

**SUBJECT: ORDER NO. \_\_\_\_\_ - PROPOSED ASSIGNMENT AND ASSUMPTION  
OF PERMIT NO. 888 BETWEEN EVERGREEN MARINE  
CORPORATION (TAIWAN), LTD. AND EVERPORT TERMINAL  
SERVICES INC., A DELAWARE CORPORATION**

**SUMMARY:**

Proposed is a request to provide consent to the assignment and assumption of Permit No. 888 (Permit) between Evergreen Marine Corporation (Taiwan), Ltd. (EMC) and Everport Terminal Services Inc. (ETS).

Permit 888 is a 32-year permit commencing on January 1, 1997 with a ten-year extension option. The Permit designates 153 acres including land, wharf, and water space to EMC with the company currently occupying approximately 140 acres. The facility has preferential use of seven berths and secondary use of another four berths.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the Order ("Order") to consent to the assignment and assumption of Permit No. 888;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Order and the Consent in the Assignment and Assumption of Permit No. 888 and Consent Thereto; and
3. Adopt Order No. \_\_\_\_\_.

**DISCUSSION:**

Company Background – Founded in 1968, EMC is one of the largest container shipping companies in the world. It is mainly engaged in international marine transportation, shipping agency services, and the distribution of containers. Headquartered in Taiwan, it controls a myriad of subsidiaries related to shipping. EMC is a publicly traded company listed on the Taiwan Stock Exchange.

EMC initiated its presence at the Port of Los Angeles (Port) opening with its Evergreen Shipping Agency Americas then headquarters in San Pedro in 1982. Its first permit with the City of Los Angeles Harbor Department (Harbor Department) began in September of 1985. Today, EMC is one of the largest customers in the Port, generating annual revenues to the Port that are higher than the minimum annual guarantee.

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EVERPORT TERMINAL SERVICES**

Rights Under Permit – EMC manages its global operations through a variety of subsidiaries. EMC has requested that the Harbor Department consent to EMC assigning to and allowing ETS to assume the Permit as allowed under Section 12, which allows a transfer of EMC's right, title, and interest under the Permit to any wholly-owned subsidiary of EMC subject to the consent of the Board, which shall not be unreasonably withheld, and also provides that the transfer shall not relieve EMC's obligations under the Permit. In connection with the foregoing, EMC is required to execute a written Guaranty (a copy of which is attached in substantial form as Transmittal 3) which provides that EMC is not released from its obligations under the Permit and guarantees the obligations (monetary and non-monetary) of the tenant under the Permit.

Potential Impact – Harbor Department staff has been concerned that the proposed assignment could potentially lead to changes in ETS' business model that may decrease the rent received by the Harbor Department. The discussions with EMC resulted in various representations from EMC through its attorney that include that EMC is doing this assignment with the purpose of increasing business, not decreasing business, that EMC has no current plan to change the use, its business or its operations, and that the business under the proposed assignment is the same as what the EMC and the Harbor Department contemplated originally. Consequently, the Harbor Department is relying on such representation and recommends that the Board consent to the assignment and assumption.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an order to allow the assignment and assumption of the Permit with EMC to ETS, which is a wholly-owned subsidiary of EMC with no change in business operations. As an administrative activity, the Director of Environmental Management has determined the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no direct employment effect.

**FINANCIAL IMPACT:**

In the immediate term, the Harbor Department expects no fiscal impact if the assignment and assumption is approved and executed. With reliance on the representation of EMC, one would expect that, at the minimum, over the course of the life of the Permit that volumes and as a result revenues will meet what had previously been contemplated with EMC but that ultimately such volumes and revenues will exceed those earlier expectations.

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**CITY ATTORNEY:**

The proposed Order is subject to approval as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Order
2. Evergreen Assignment and Assumption
3. EMC Guaranty

FIS Approval: KP (initials)  
City Attorney: TR (initials)



KARL K.Y. PAN  
Interim Director of Real Estate



KATHRYN McDERMOTT  
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.  
Executive Director

KP:RG:RV:raw

BL403raw Evergreen

ORDER NO. \_\_\_\_\_

An Order of the Board of Harbor Commissioners of the City of Los Angeles consenting to the assignment of Permit No. 888 from EVERGREEN MARINE CORPORATION (TAIWAN), LTD. ("EVERGREEN"), to EVERPORT TERMINAL SERVICES, INC., a Delaware corporation ("EVERPORT").

WHEREAS, EVERGREEN is the tenant under Permit No. 888 ("Permit No. 888" or "Permit") dated May 14, 1998, which Permit has been amended by a First Amendment, Second Amendment, Third Amendment, and Fourth Amendment; (All references herein to Permit No. 888 shall included said amendments.)

WHEREAS, Section 12 of Permit No. 888 provides, in pertinent part, that "With the prior written approval of Board, which shall not unreasonably be withheld, Tenant may transfer its right, title and interest pursuant to this Agreement to any wholly owned subsidiary of Tenant, provided that no transfer, even if approved by Board shall relieve Tenant of Tenant's obligations under this Agreement."; and

WHEREAS, EVERGREEN has requested consent to assign its right, title and interest under the Permit to EVERPORT which EVERGREEN has represented is a wholly-owned subsidiary; and

WHEREAS, in connection with the requested assignment, EVERGREEN has executed a written Guaranty in favor of the City, which, among other things, irrevocably and unconditionally guarantees the full and timely payment and performance of the debts, obligations, covenants, conditions and liability (monetary and non-monetary) of Everport as tenant under the Permit (including under any extension of the Permit pursuant to the Option to Extend Term provided in Section 1(c) of the Permit and also during any period of holdover, and further, has affirmed its primary obligation under the Permit;

WHEREAS, in connection with the requested assignment, EVERPORT has agreed in the Assignment and Assumption of Permit No. 888 to, among other things, assume and be bound by and perform all of the obligations, terms, conditions and covenants of tenant under the Permit;

NOW, THEREFORE, IT IS HEREBY ORDERED by the Board of Harbor Commissioners of the City of Los Angeles as follows:

Section 1. City consents to the assignment of Permit No. 888 from EVERGREEN MARINE CORPORATION (TAIWAN), to EVERPORT TERMINAL SERVICES, INC., a Delaware corporation, a wholly-owned subsidiary, which has been conditioned upon: provided:

(a) EVERGREEN MARINE CORPORATION (TAIWAN), Ltd.'s executes a written Guaranty in favor of City which, among other things,

irrevocably and unconditionally guarantees the full and timely payment and performance of the debts, obligations, covenants, conditions and liability (monetary and non-monetary) of Everport as tenant under the Permit (including under any extension of the Permit pursuant to the Option to Extend Term provided in Section 1(c) of the Permit and also during any period of holdover, and further, affirms its primary obligation under the Permit;

(b) EVERPORT TERMINAL SERVICES, INC. agrees to be bound by all of the terms and conditions of Permit No. 888 and assume all of the obligations of EVERGREEN MARINE CORPORATION (TAIWAN), Ltd., as tenant, thereunder;

(c) The consent to the assignment described in this Order shall not be deemed as a consent to any other transfer under Permit No. 888; and

(d) City's consent shall not waive any of City's rights nor shall be construed to in any way amend any of the provisions of Permit No. 888; and

Section 2. This Order shall not become effective until the conditions of the Order are met.

Section 3. Except as herein provided, each and every one of the covenants, terms and conditions of Permit No. 888 shall be and remain in full force and effect.

I HEREBY CERTIFY that the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held on

\_\_\_\_\_  
KARLA G. TONDREAULT,  
Board Secretary

The undersigned hereby accept the terms and conditions as specified above.

Dated: \_\_\_\_\_

EVERGREEN MARINE CORPORATION  
(TAIWAN), LTD.

By \_\_\_\_\_

\_\_\_\_\_  
(Print/Type Name and Title of Officer)

Attest \_\_\_\_\_

\_\_\_\_\_  
(Print/Type Name and Title of Officer)

Dated: \_\_\_\_\_

EVERPORT TERMINAL SERVICES, INC.,  
a Delaware corporation

By \_\_\_\_\_

\_\_\_\_\_  
(Print/Type Name and Title of Officer)

Attest \_\_\_\_\_

\_\_\_\_\_  
(Print/Type Name and Title of Officer)

APPROVED AS TO FORM

\_\_\_\_\_, 2012  
CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By \_\_\_\_\_  
ESTELLE M. BRAAF, Deputy

**ASSIGNMENT AND ASSUMPTION  
OF PERMIT NO. 888  
AND CONSENT THERETO**

This ASSIGNMENT AND ASSUMPTION OF PERMIT NO. 888 (“Assignment”) dated as of \_\_\_\_\_, 2012 is entered into by and between EVERGREEN MARINE CORPORATION (TAIWAN), Ltd (“Assignor” or “Evergreen”) and EVERPORT TERMINAL SERVICES INC., a Delaware corporation (“Assignee” or “Everport”).

**RECITALS**

- A. Assignor is the Tenant under that certain Permit No. 888 (“Permit”) dated May 14, 1998, with the City of Los Angeles (“City”) acting by and through its Board of Harbor Commissioners with respect to certain real property located in the City of Los Angeles, State of California (“Property”) as more particularly described in Exhibit A of the Permit. The Permit was amended by a First Amendment to Permit No. 888 (“First Amendment”) entered into on or about May 26, 1999; a Second Amendment to Permit No. 888 (“Second Amendment”) entered into on or about August 27, 2003; a Third Amendment to Permit No. 888 (“Third Amendment”) entered into on or about June 10, 2010; and a Fourth Amendment to Permit No. 888 (“Fourth Amendment”) entered into on or about June 15, 2010. All references to the Permit herein shall include the First Amendment, Second Amendment, Third Amendment and Fourth Amendment. Unless otherwise defined herein, all capitalized terms used herein shall have the same meaning as set forth in the Permit.
- B. Assignor desires to assign its interest in the Permit to Assignee, a wholly-owned subsidiary of Assignor. Assignee desires to accept such assignment and desires to assume and be bound by all obligations, terms, conditions and covenants of tenant under the Permit.
- C. Assignor has requested consent from City to said assignment.

Now, THEREFORE, in consideration of the promises and conditions herein, the parties agree as follows.

**AGREEMENT**

- 1. **Assignment.** Effective as of the Effective Date (as defined below), Assignor hereby assigns to Assignee all of its right, title and interest in and to the Permit, and all personal property owned by Assignor located on the Property (“Personal Property”). Assignor agrees to indemnify Assignee against and hold Assignee harmless from any and all cost, liability, loss, damage or expense, including without limitation, attorneys’ fees, accruing on or to be performed prior to the Effective Date and arising out of the Assignor’s obligations under the Permit.
- 2. **Assumption.** Effective as of the Effective Date, Assignee accepts the foregoing assignment and assumes and agrees to be bound by and perform all of the obligations, terms, conditions and covenants of Tenant under the Permit, and accepts title to the Personal Property. Assignee agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including without limitation, attorneys’ fees, accruing on or to be performed subsequent to the Effective Date and arising out of the Assignor’s obligations under the Permit.

3. **No Proration of Payments.** Neither Assignor nor Assignee shall tender any prorated amounts to City as payments for obligations arising under or out of the Permit including but not limited to rent payments. City shall have no obligations to prorate any amounts or credits due to tenant under the Permit. As provided in Section 8, below, as of the Effective Date, all payments, credits, and all other communications shall be sent to Assignee even if they pertain to the period before the Effective Date. This Assignment and/or any other agreement between Assignor and Assignee does not affect the obligation of tenant to pay to City in full the rent payment or any other payment due to City under the Permit. (By way of example, the full amount of rent is due and payable to City on the first of the month even if the Assignment is scheduled to take place during the middle of that same month. No prorated amounts shall be tendered.)
4. **Successors.** This Assignment shall be binding on and inure to the benefit of the parties hereto, their successors-in-interest and assigns. Notwithstanding, nothing stated herein shall expressly or impliedly be a consent to any further or additional assignment or transfer.
5. **Jurisdiction.** In the event of any dispute or lawsuit in connection with and/or arising out of the Permit including but not limited to this Assignment and Assumption of Permit and Consent Thereto, all parties including but not limited to Assignor [EVERGREEN MARINE CORPORATION (TAIWAN), Ltd.] agree to irrevocably submit to the jurisdiction of the state and federal courts located in Los Angeles County, California.

5.1 **Agent for Service of Process and Notice Address for Assignor:** Assignor also hereby appoints Evergreen Shipping Agency (America) Corporation, 6201 Katella Avenue, Suite 200, Cypress, California 90630, Attention: \_\_\_\_\_ as its agent for service of process in connection with any matter arising under and/or out of the Permit including this Assignment and also as the address for Notice to Assignor for all written notices as provided in Section 15(m) of the Permit. Assignor shall not remove such agent without designation of another agent located in the State of California and without giving City written notice of the change in designation of agent and identification of the new agent to:

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90731  
Attention: Director of Real Estate

with a copy to:

Los Angeles City Attorney's Office  
425 South Palos Verdes Street  
San Pedro, California 90731

If City is unable to serve Guarantor as provided above, City may serve Guarantor by serving DLA Piper, 550 South Hope Street, Suite 2300, Los Angeles, California 90071.

5.2 **Notice to Assignee.** The address for written notice to Assignee shall be as provided in Section 15(m) of the Permit shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

6. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California.
7. **Assignor's Continuing Liability:** Assignor shall execute a written Guaranty for the benefit of City, the execution by Assignor and approval of which is a condition to the effectiveness of this Assignment, which, as more particularly provided therein, guarantees the full and timely payment and performance of the debts, obligations, covenants, conditions and liability of Assignee under the Permit including during any holdover and any extended term pursuant to the Option to Extend in Section 1(c) of the Permit. Assignor is not released from its obligations under the Permit and shall remain primarily liable for all obligations thereunder, monetary and non-monetary. No action of the parties shall be deemed to alter the primary obligation of Assignor under the Permit including but not limited to the execution of the Guaranty and/or making a demand upon Assignee and/or acceptance of partial payment or performance from Assignor.
8. **Effective Date.** This Assignment shall become effective and enforceable ("Effective Date") against all parties when this Assignment and the Guaranty to be made by Assignor in favor of City are executed by all parties and all required approvals of said documents are obtained including by City's Board of Harbor Commissioners. As of the Effective Date, any and all communications to the tenant under the Permit, including but not limited to any billings, invoices, credits, reconciliations, payments, shall be sent by City to Assignee, even if such communications pertain to the period before the Effective Date.
9. **Further Assurances.** Assignor and Assignee each agree to execute and deliver to the other party, upon demand, such further documents, instruments, and conveyances, and shall take such further actions as may be reasonably necessary or desirable to complete the transactions contemplated therein.
10. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be deemed an original of which, when taken together shall constitute one and the same document.
11. **Entire Agreement.** This Assignment constitutes the entire agreement of the parties with respect to the Assignment. Notwithstanding, this does not include the Guaranty which is required by City to be executed by Assignor in connection with the Assignment. Captions appearing herein are used for reference only and shall not be construed as limiting anything set forth herein. Nothing stated herein amends the terms of the Permit nor waives any of City's rights.

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first written

ASSIGNOR

EVERGREEN MARINE CORPORATION  
(TAIWAN), LTD.

By: \_\_\_\_\_

Print Name/Title of Officer

Attest: \_\_\_\_\_

Print Name/Title of Officer

ASSIGNEE

EVERPORT TERMINAL SERVICES INC.,  
a Delaware corporation

By: \_\_\_\_\_

Print Name/Title of Officer

Attest: \_\_\_\_\_

Print Name/Title of Officer

CONSENT

The City of Los Angeles acting by and through its Board of Harbor Commissioners hereby consents to the foregoing Assignment and Assumption and is conditioned upon Assignor's execution of the written Guaranty which shall also be executed by Assignee with respect to Section 15 of the Guaranty. This consent shall not be deemed a consent to any other or further transfers.

THE CITY OF LOS ANGELES, by its Board  
of Harbor Commissioners

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_

Executive Director

Attest \_\_\_\_\_

Korla G.Tondreault  
Board Secretary

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2012

CARMEN A. TRUTANICH, City Attorney

Thomas A. Russell, General Counsel

By: \_\_\_\_\_  
Estelle M. Braaf, Deputy

## GUARANTY

THIS GUARANTY ("**Guaranty**") is made as of \_\_\_\_\_, 2012, by EVERGREEN MARINE CORPORATION (TAIWAN) LTD. ("**Guarantor**") to and for the benefit of the CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners ("**City**").

### RECITALS

A. Whereas, Guarantor is the Tenant under Permit 888, dated as of May 14, 1998 ("Permit") with the City for certain premises as more particularly described in Exhibit "A" attached to the Permit. The term "Permit" shall include the First Amendment to Permit No. 888 ("First Amendment") entered into on or about May 26, 1999; the Second Amendment to No. 888 ("Second Amendment") entered into on or about August 27, 2003; the Third Amendment to Permit No. 888 ("Third Amendment") entered into on or about June 10, 2010; and the Fourth Amendment to Permit No. 888 ("Fourth Amendment") entered into on or about June 15, 2010.

B. Guarantor has requested consent from City to assign the Permit to a newly-formed, wholly-owned subsidiary of Guarantor known as Everport Terminal Services Inc., a Delaware corporation ("Tenant" or "Everport") pursuant to the provisions of a separate written Assignment and Assumption Agreement ("Assignment") [*i.e.*, Assignment and Assumption of Permit No. 888 and Consent Thereto].

C. In connection with the Assignment, Guarantor has agreed to irrevocably guarantee the timely payment and performance of all obligations of Tenant arising under the Permit; and

D. Guarantor acknowledges that the consummation of the transactions hereunder and under the Assignment provides direct benefits to Guarantor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to obtain City's approval of the Assignment and intending to be legally bound, Guarantor does hereby warrant, represent, and covenant unto City as follows:

1. GUARANTY.

Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full and timely payment and performance of the debts, obligations, covenants, conditions and liability (monetary and non-monetary) of Tenant under the Permit (including under any extension of the Permit pursuant to the Option to Extend Term ("Option to Extend Term") provided in Section 1(c) of the Permit and also during any period of holdover whether or not the Option to Extend Term is exercised) whether now or hereafter made, incurred or created, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and regardless of whether recovery against Tenant with respect to such obligations is prevented by bankruptcy, or otherwise (collectively, the "**Guaranteed Obligations**"). It is specifically agreed that that this Guaranty is a continuing guaranty.

2. SUBSEQUENT ACTS BY CITY.

City may, in its sole and absolute discretion and without notice to Guarantor, take any action which might otherwise be deemed a legal or equitable release or discharge of Guarantor's obligations hereunder without either impairing or affecting the liability of Guarantor for payment of the Guaranteed Obligations, which actions might include, by way of illustration and not limitation:

2.1 the renewal or extension of any of the Guaranteed Obligations or any payments hereunder including but not limited to an amendment of the Permit;

2.2 the acceptance of partial payment or performance of the Guaranteed Obligations;

2.3 the settlement, release, compounding, compromise, cancellation, rearrangement or consolidation of any of the Guaranteed Obligations;

2.4 the collection of or other liquidation of any claims City may have in respect to the Guaranteed Obligations;

2.5 the granting of indulgences, forbearances, compromises, extensions or adjustments in respect to any covenant or agreement under the Permit;

2.6 the release from liability of any guarantor, or payment of the Guaranteed Obligations or any portion thereof;

2.7 the release, surrender, exchange or compromise of any lien, security or collateral held by City as security for the Guaranteed Obligations; or

2.8 the release or compromise of any lien or security held by City as security for the liability of any person who is guaranteeing the Guaranteed Obligations.

Any alterations of the terms of this Guaranty shall be in writing, mutually agreed to by City and by Guarantor and in conformity with the procedures set forth in City's Charter and Administrative Code.

3. EXPENSES.

Guarantor agrees to reimburse City for all expenses (including without limitation reasonable attorneys' fees, costs and expenses) incurred by City in enforcing the Guaranteed Obligations, pursuing any remedies relating to the Guaranteed Obligations set forth in the Permit, and enforcing this Guaranty.

4. PAYMENT BY GUARANTOR.

In the event that City sends Tenant a written notice (“Notice”) of breach and demand to comply with the terms or conditions of the Permit as provided in Section 13(a)(1) of the Permit, Guarantor shall be sent a copy of the Notice and given an opportunity to cure the breach described in the Notice on the terms and conditions described in the Notice. Said Notice shall be sent to Guarantor in accordance with the terms of Section 17, below. City shall not be required to liquidate any lien or any other form of security, instrument, or note held by City prior to making such demand. THIS IS A GUARANTY OF PAYMENT AND PERFORMANCE AND NOT OF COLLECTION, and Guarantor hereby waives all rights that Guarantor may have, if any, to require that any action be brought against Tenant (or any other person or entity) or to pursue any other remedy before proceeding against Guarantor or to require that resort be first made against any security prior to demanding payment or performance hereunder before proceeding against Guarantor. No action of any of the parties, including but not limited to the making of this Guaranty shall release Guarantor from its obligations under the Permit. Guarantor remains primarily liable for all obligations, monetary and non-monetary, under the Permit and shall remain primarily liable through the remainder of the term of the Permit and any extended term if the Option to Extend in Section 1(c) is exercised and any holdover period.

5. CUMULATIVE REMEDIES.

Guarantor hereby agrees that all rights and remedies that City is afforded by reason of this Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as City deems advisable. In addition, all such rights and remedies are nonexclusive and shall in no way limit or prejudice City's ability to pursue any other legal or equitable rights or remedies that may be available. Without limiting the generality of the foregoing, Guarantor agrees that in any action by City by reason of the Guaranteed Obligations, City at its election may proceed (a) against Guarantor together with Tenant, (b) against Guarantor and Tenant individually (at the same time or at different times), or (c) against Guarantor only without having commenced any action against or having obtained any judgment against Tenant.

6. WAIVERS BY GUARANTOR.

6.1 Guarantor hereby waives:

6.1.1 notice of acceptance of this Guaranty and of creation of the Guaranteed Obligations;

6.1.2 presentment, notice of non-payment, and demand for payment of the Guaranteed Obligations other than the notice provided in Section 4, above;

6.1.3 protest, notice of protest, and notice of dishonor or default to Guarantor or to any other party with respect to any of the Guaranteed Obligations;

6.1.4 any defense or circumstance (including, without limitation, disability, insolvency, lack of authority or power, insanity, minority, death or dissolution), other than payment of the Guaranteed Obligations, which might otherwise constitute a legal or equitable discharge of Guarantor's liability hereunder;

6.1.5 any rights to extension, composition or otherwise under the Bankruptcy Code or any amendments thereof, or under any state or other federal statute;

6.1.6 the right to trial by jury in any litigation arising out of, relating to, or connected with this Guaranty;

6.1.7 all rights or defenses that Guarantor may have as set forth in Division Three, Part 4, Title 13, currently Sections 2787 through 2914, of the California Civil Code, which address generally suretyship.

6.2 It is agreed between Guarantor and City that the foregoing waivers are a material element and essence of the Assignment transaction and that, but for this Guaranty and such waivers, City would decline to consent to the Assignment.

7. WAIVER AND RELEASE OF SUBROGATION AND PARTICIPATION.

Until such time as all obligations of Tenant under the Permit have been satisfied, Guarantor shall have no right of subrogation in or under the Permit, and no rights of reimbursement, indemnity or contribution from Tenant or any other rights by law, equity, statute or contract that would give rise to a creditor-debtor relationship between Guarantor and Tenant. Effective for the time period described in the preceding sentence, Guarantor hereby explicitly waives and releases any of the above-described rights of subrogation, reimbursement, indemnity, contribution, participation, and any right to require the marshaling of Tenant's assets under any circumstances.

8. SUBORDINATION.

Any obligation or debt of Tenant now or hereafter held by Guarantor is hereby subordinated to the Guaranteed Obligations and, upon the occurrence of an event of default under the Permit, Guarantor shall not enforce or collect any such indebtedness from Tenant. Any sums collected at City's request or collected in contravention of the prohibition set forth herein shall be held by Guarantor as trustee for City and shall be paid over to City on account of the Guaranteed Obligations; provided, however, such payments shall not impair, reduce or affect in any manner the liability of Guarantor under the other provisions of this Guaranty except to the extent of such payments.

9. REPRESENTATIONS AND WARRANTIES.

Guarantor hereby represents and warrants to City that:

9.1 Guarantor now has no defense whatsoever to any action, suit or proceeding whatsoever that may be instituted on this Guaranty;

9.2 No other agreement or special condition exists between Guarantor and City regarding the liability of Guarantor hereunder; and

9.3 This Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms.

10. STRICT PERFORMANCE: WAIVERS.

No failure, delay or omission by City to exercise any of the rights, powers, remedies and privileges hereunder shall be deemed a waiver thereof and every such right, power, remedy and privilege may be exercised repeatedly. No notice to or demand on Guarantor shall be deemed to be a waiver of the right of City to take further action without notice or demand as provided herein. In no event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing executed by City. Any waiver granted shall be applicable only in the specific instance for which it is given. Failure of City to insist upon strict performance or observance of any of the terms, provisions and covenants hereof or to exercise any right herein contained shall not be construed as a waiver or relinquishment of the right to demand strict performance at another time. Receipt by City of any payment or performance on the Guaranteed Obligations shall not be deemed a waiver of the breach of any provision hereof or of the Permit.

11. CAPTIONS.

The captions appearing herein are used for reference only and shall not be construed as limiting anything set forth herein.

12. SEVERABILITY.

If any term, covenant, condition or provision of this Guaranty, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Guaranty, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. GOVERNING LAW.

This Guaranty shall be governed by the laws of the State of California without reference to choice of law rules.

14. CONSENT TO JURISDICTION; SERVICE OF PROCESS.

If there is a dispute or lawsuit in connection with this Guaranty, by execution hereof, Guarantor hereby agrees to irrevocably submit to the jurisdiction of the State and Federal Courts located in Los Angeles County, California. Guarantor hereby appoints Evergreen Shipping Agency (America) Corporation, 6021 Katella Avenue, Suite 200, Cypress, California 90630 as its agent for service of process in connection with any dispute under or arising out of this Guaranty and for the address of any written notices. Guarantor shall not remove such agent without the designation of another agent located in the State of California. If City is unable to serve Guarantor as provided above, City may serve Guarantor by serving DLA Piper, 550 South Hope Street, Suite 2300, Los Angeles, California 90071.

15. ASSIGNMENT: DELEGATION: BINDING EFFECT.

The duties and obligations of Guarantor may not be delegated, assigned or transferred (collectively, "Transferred") by Guarantor without the prior written consent of City which shall not be unreasonably withheld, conditioned or delayed. The term "Transferred" as used herein shall include any sale of stock or assets, merger or consolidation or reorganization by or of Guarantor (or any entity that directly or indirectly controls or owns more than fifty percent (50%) of Guarantor), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, transfer, gift, or grant of total or partial control and shall also include the involvement of Guarantor 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 by a formal assignment, which involvement results in a reduction of the net worth of Guarantor (established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth at the time of the execution of this Guaranty or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. **A breach of this Section shall also constitute a material breach under the Permit including during any extended term if the Option to Extend Term is exercised and/or any holdover period whether or not the Option to Extend Term is exercised.** The duties and obligations of Guarantor shall bind Guarantor's heirs, personal representatives, executors, successors and assigns. **A breach of this Section shall also constitute a material breach under the Permit including during any extended term if the Option to Extend Term is exercised and/or any holdover period whether or not the Option to Extend Term is exercised.** The duties and obligations of Guarantor shall bind Guarantor's heirs, personal representatives, executors, successors and assigns.

16. TERMINATION, REINSTATEMENT; LIMITATIONS

16.1 Subject to Section 16.2 below, Guarantor's obligations hereunder shall terminate and this Guaranty shall be released upon payment and performance in full of all debts, obligations and liabilities of Tenant to City under the Permit including during an extended term if Tenant exercises the Option to Extend Term in Section 1(c) of the Permit and including during any holdover period whether or not the Option to Extend Term is exercised;

16.2 This Guaranty shall remain in full force and effect and continue to be effective should any petition be filed by or against Tenant under the Bankruptcy Code, as at any time amended, for liquidation or reorganization, or should Tenant become insolvent or make an assignment for the benefit of creditors or a receiver or trustee be appointed for all or any significant part of Tenant's assets, and this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Guaranteed Obligations, or any part thereof is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by City, whether as a "preferential transfer," "voidable preference," "fraudulent conveyance," or otherwise, as if the portion of such payment rescinded, reduced, restored or returned had never been made.

17. NOTICES.

Notice to either party shall be sent as follows and may be delivered personally or deposited in the United States mail, postage prepaid (without or without a return receipt requested card. Nothing shall preclude or render inoperative service of such notice in the manner provided by law.

**To City:** The City of Los Angeles  
Executive Director  
425 S. Palos Verdes Street  
San Pedro, California 90731

**To Guarantor:** Evergreen Marine Corporation (Taiwan) Ltd  
c/o Evergreen Shipping Agency (America)  
Corporation  
6201 Katella Avenue, Suite 200  
Cypress, California 90630

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty the day and year first above written.

**Guarantor:**  
Evergreen Marine Corporation (Taiwan) Ltd

By: \_\_\_\_\_  
Print Name : \_\_\_\_\_  
Title of Officer: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title of Officer: \_\_\_\_\_

ASSIGNEE/TENANT EVERPORT agrees that a breach of Section 15 of this Guaranty shall also constitute a material breach of the Permit.

EVERPORT TERMINAL SERVICES  
INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title of Officer: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title of Officer: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2012

CARMEN A. TRUTANICH, City Attorney

Thomas A. Russell, General Counsel

By \_\_\_\_\_  
Estelle M. Braaf, Deputy