

14.2 Procedure to Obtain Consent to Transfer. Notwithstanding the prohibition set forth in Section 14.1, if Tenant desires to undertake a Transfer, it may seek City's consent thereto. Tenant covenants that before entering into or permitting any Transfer, it shall provide to City written notice at least thirty (30) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, City reserves the right to allow Tenant, on a case-by-case basis, to submit to City for City's consent Transfers that have become effective. In any event, Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

14.2.1 Tenant's Transfer Notice shall contain each of the following:

- (a) Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");
- (b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business, Transferee's character and reputation and experience in the operations proposed;
- (c) Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;
- (d) Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;
- (e) All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Agreement; the proposed use of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;
- (f) The proposed form of a guaranty or guarantys providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(g) A business plan for the Transferee including specific estimates of cargo volume anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources;

(h) A general description of any planned Alterations or improvements to the Premises; and

(i) Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records or other information of Tenant or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of Tenant's request for consent.

14.2.2 If City consents to a Transfer, the following limits apply:

(a) City does not agree to waive or modify the terms and conditions of this Agreement;

(b) Such consent does not constitute either consent to any further or other Transfer by either Tenant or Transferee or a bar disqualifying submittal of additional Transfer Notices in accordance with the terms of this Agreement following such consent;

(c) If, following such consent, Tenant remains a party to this Agreement, Tenant shall remain liable under this Agreement and any guarantor shall remain liable under its guaranty;

(d) Such consent shall not transfer to the Transferee any option granted to the original Tenant by this Agreement unless such transfer is specifically consented to by City in writing;

(e) Tenant may enter into that Transfer in accordance with this Section 14 if: (a) the Transfer occurs within six (6) months after City's consent; (b) the Transfer, in the sole and absolute discretion of Executive Director, is on substantially the same terms as specified in the Transfer Notice; and (c) Tenant delivers to City promptly after execution an original executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to City,

(f) If the Transfer occurs more than six (6) months after City's consent or, in the sole and absolute discretion of Executive

Director, the terms of the Transfer materially change from those in the Transfer Notice, Tenant shall submit a new Transfer Notice under this Section 14, requesting City's consent. A material change for purposes of this Section 14 is one the terms of which would have entitled City to refuse to consent to the Transfer initially, or would cause, in the sole and absolute discretion of Executive Director, the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice; and

(g) Tenant and/or Transferee, upon City's written request, shall provide proof, in a form satisfactory in the sole reasonable discretion of the Risk Manager of City's Harbor Department, demonstrating that insurance of the type and limits required by Section 13 is and shall be in full effect at all times in or around the time period in which the proposed Transfer is anticipated to occur. If requested in writing by City, Transferee shall provide a guaranty agreement in a form acceptable to City obligating Transferee to pay any uninsured or underinsured loss on a claim that, in City's sole and absolute discretion, would have been covered by insurance fully compliant with Section 13.

14.3 Factors Germane to City Consent. In evaluating any Transfer Notice, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following factors, among others:

(a) The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity(ies);

(b) The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;

(c) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;

(d) Whether the proposed Transfer is consistent with the terms and conditions of this Agreement in existence when Tenant submitted the Transfer Notice and with the laws, rules and regulations applicable to the Premises and Tenant's use thereof;

(e) Whether the information provided by Tenant in connection with Section 14.2.1 justifies such consent;

(f) The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any.

14.4 Additional Conditions for Subleases. If Tenant requests consent to a Transfer consisting of a sublease, the following terms and conditions shall also apply:

(a) City reserves the right to recapture any portion of the Premises proposed by Tenant to be subleased (with appropriate amendments to this Agreement) and to undertake the transaction with the proposed Transferee directly;

(b) Tenant in no event shall be allowed to sublet more than twenty percent (20%) of the Premises to any one sublessee unless this Agreement expressly provides otherwise; and

(c) Tenant shall not collect sublease compensation that exceeds, on a pro rata basis, based on the preceding year's revenue, the compensation due City from Tenant under Section 5 of this Agreement.

14.5 Charter and Administrative Code. Tenant acknowledges that this Agreement is subject to the Charter of City and the Administrative Code of City and that approval of a Transfer may require action by several separate entities, including but not limited to the Los Angeles City Council.

14.6 Tenant Remedies. If City wrongfully denies or conditions its consent, Tenant may seek only declaratory and/or injunctive relief. Tenant specifically waives any damage claims against City in connection with the withholding or conditioning of consent.

14.7 Indemnity in Favor of City. In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Section 13 of this Agreement, Tenant shall indemnify, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer.

14.8 Rent or Performance. City in its sole discretion may accept rent or performance of Tenant's obligations under this Agreement from any person other than Tenant pending approval or disapproval of a Transfer. City's exercise of discretion to accept rent or performance shall be reflected in writing.