

PERMIT NO. 900  
GRANTED BY THE CITY OF LOS ANGELES  
TO WWL VEHICLE SERVICES AMERICAS, INC.

THIS PERMIT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between THE CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and WWL VEHICLE SERVICES AMERICAS, INC., a California corporation, 188 Broadway, Woodcliff Lake, New Jersey 07677 ("Tenant").

**Section 1. Agreement.**

City hereby delivers, and Tenant hereby accepts, the Premises hereinafter described, subject to the terms and conditions provided herein.

**Section 2. Effective Date; Term and Holdover.**

**2.1 Effective Date.** This Agreement shall become effective retroactively to January 1, 2012 ("Effective Date"), after execution by City and Tenant, and upon the last approval required by City's Charter and Administrative Code.

**2.2 Term.** The term of this Agreement shall commence on the Effective Date and shall continue until it expires on January 1, 2022 ("Expiration Date"), unless sooner terminated in accordance with Section 9. The Tenant shall have one (1) five (5) year option to extend the term of this Agreement. Tenant shall provide written notice to City one (1) year prior to the expiration of the original term of the Agreement in order to exercise the five-year option to extend the term.

**2.3 Holdover After Expiration Date.** Notwithstanding the option to extend the term of this Agreement available pursuant to Section 2.2, Tenant shall not hold over any part of the Premises after the Expiration Date unless it submits a written request to hold over all or part of the Premises to the Executive Director of City's Harbor Department ("Executive Director"), and Executive Director thereafter approves such request in writing. Any holdover shall be deemed an extension of this Agreement on a month-to-month basis and on the same terms and conditions as set forth in this Agreement, except that, if Executive Director, prior to the Expiration Date, has not provided written approval of a written request from Tenant to hold over, the Compensation (as set pursuant to Section 5) applicable at the commencement of such holdover, at the sole and absolute discretion of Executive Director, may be increased up to one hundred fifty percent (150%) of the Compensation last in effect before such holdover commenced. If Executive Director has provided written approval of a written request from Tenant to hold over prior to the Expiration Date, the Compensation applicable at the commencement of such holdover shall be the Compensation last in effect before such holdover commenced. City and Tenant acknowledge and agree that: (a) this Section 2.3 shall neither be deemed nor treated as a limitation or waiver of any rights or remedies of City provided in this Agreement or at law (all of which are reserved, including, without limitation, an action for unlawful detainer), an option to

extend the Agreement, express or implied commitment to pursue or issue any approvals or entitlements, or express or implied permission for Tenant to remain on the Premises after the Expiration Date; and (b) City expressly reserves the right to require Tenant to surrender possession of the Premises to City as provided in this Agreement on the Expiration Date or sooner termination of this Agreement.

### **Section 3. Premises.**

**3.1 Description.** The premises subject to this Agreement consist of Parcel Nos. 1, 2, 3, 4, 5 and 6, as delineated and more particularly described on Drawing No. 1-1540-3 ("Premises"). Such drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department ("Harbor Engineer") and is attached hereto as Exhibit "A." The total square footage of the Premises is 3,969,152.

The improvements on the Premises as of the Effective Date, which improvements are owned by City and subject to this Agreement, are identified in Exhibit "B," a copy of which is attached hereto. This Agreement refers to the totality of such City-owned improvements as "City's Improvements."

City and Tenant acknowledge that improvements may be constructed on the Premises following the Effective Date. If, following the Effective Date, an improvement constituting an Alteration (as defined in Section 7) is added to the Premises, Harbor Engineer shall: (i) revise Exhibit "B" to include both depiction of such additional improvement and a statement identifying such improvement's ownership; (ii) renumber the revised Exhibit "B" (such that, for example, after any such revision and renumbering, Exhibit "B" becomes "Exhibit "B-1""); and (iii) transmit such revised and renumbered Exhibit "B" to Tenant. Upon City's transmittal to Tenant, such revised and renumbered Exhibit "B" shall be deemed to: (i) be incorporated into this Agreement without further action of Board or Council; (ii) supersede any earlier issued iterations of Exhibit "B," and (iii) with respect to improvements, depict all improvements on the Premises.

City and Tenant acknowledge that Tenant has proposed, and shall be responsible for all costs associated with, construction of additional loading rail tracks on the Premises. City shall not be responsible for any costs associated with such rail project.

Any additional improvements to be constructed or financed by City following the Effective Date shall trigger recalculation and adjustment of the compensation required pursuant to this Agreement.

**3.2 Premises Subject to Tariff.** Tenant accepts the Premises and shall undertake the Permitted Uses set forth in Section 4.1 subject to each and every of the terms and conditions provided herein, and to each and every of the rates, terms and conditions of Tariff No. 4 of City's Harbor Department as it now exists or may be amended or superseded ("Tariff"). Tenant represents and warrants that it has received, read and understands the rates, terms and conditions of Tariff and covenants that, at all times during the term of this Agreement, it shall maintain a complete and current Tariff at the address set forth in Section 15.9 below. Except as otherwise set forth in this

Agreement, Tenant 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 Agreement and a Tariff provision. In the event of such conflict, this Agreement shall at all times prevail.

**3.3 Reservations.** This Agreement and the Premises are and shall be at all times subject to the reservations listed below and additional reservations City may reasonably require after the Effective Date, of which Tenant shall receive advance written notice, for which Tenant shall receive no compensation unless otherwise provided.

3.3.1 Utility or other Rights-of-Way. Rights-of-way for sewers, pipelines (public or private), conduits for telecommunications, electric, gas, and power lines, as may from time to time be determined to be necessary by Board, including the right to enter upon, above, below or through the surface to construct, maintain, replace, repair, enlarge or otherwise utilize the Premises for such purpose, without compensation or abatement of rent and with as minimal interference with the Permitted Uses as possible. If Board makes such determination of necessity, City shall issue a written right of entry or other entitlement to the applicable third-party requiring it and/or its parent to name Tenant as an additional insured on any insurance policies required by City and to defend and indemnify Tenant from and against any claims, demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal action that arise from or are related to such third-party's entry onto the Premises. Tenant may directly charge any third-party entering the Premises for damages incurred by Tenant on Tenant-owned property as a result of the third-party entry.

3.3.2 Streets and Highways. Rights-of-way for streets and other highways and for railroads and other means of transportation which are apparent from a visual inspection of the Premises or which shall have been duly established or which are reserved herein.

3.3.3 Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever that appear of record in the office of the Recorder of Los Angeles County, California, or in the official records of City or any of its various departments.

3.3.4 Mineral Rights Excluded. All minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from the Premises, without, however, the right of surface entry on the Premises as long as such entry does not materially interfere with the Permitted Uses.

3.3.5 Homeland Security. Access, temporary occupancy and other rights reasonably necessary to comply with homeland security or related requirements

of local, state and federal law enforcement agencies or City's Harbor Department. City reserves the right to install, maintain and operate on the Premises equipment related to homeland security and/or public safety with seventy-two (72) hours' prior written notice to Tenant.

3.3.6 Environmental Initiatives. Access, temporary occupancy and other rights reasonably necessary to comply with environmental initiatives and/or policies of City, local, state and federal agencies or the City's Harbor Department, provided that the exercise of such rights do not materially interfere with the Permitted Uses.

3.3.7 Telecommunication Equipment. Access, temporary occupancy and the right of City or third-parties selected by City in its sole and absolute discretion to install, operate, maintain and repair telecommunication equipment, without compensation to Tenant unless otherwise agreed to in writing by City. City shall minimize any interference with the Permitted Uses to the extent possible.

**3.4 Inspection by Tenant.** Tenant has inspected the Premises in contemplation of occupying them for the Permitted Uses set forth in Section 4.1 and acknowledges and agrees that:

(a) The Premises are suitable for the Permitted Uses. No individual of or affiliated with City has made any representation or warranty with respect to the Premises, or improvements existing or planned, unless the nature and extent of such representation or warranty is described in writing and attached hereto.

(b) With respect to acreage or City's Improvements delivered by City and in Tenant's possession, any modification, improvement, or addition to the Premises and any equipment installation required by the City Fire Department, City Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, United States Coast Guard, Environmental Protection Agency, Department of Homeland Security or any other local, regional, state or federal agency in connection with Tenant's undertaking of the Permitted Uses shall be constructed or installed at Tenant's sole cost and expense.

**3.5 Board-Authorized Additions and Deletions to Premises.** Land and/or water not exceeding ten percent (10%) of the area granted (as specified in Section 3.1 above) or 20,000 square feet, whichever is greater, may be permanently added to or deleted from the Premises by mutual written agreement of Board and Tenant subject to the following conditions:

(a) So long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor) or not temporary as determined by City in its sole reasonable discretion, then the Compensation determined according to the provisions of Section 5 shall be increased or decreased pro rata to reflect any such addition or deletion;

(b) If permanent changes in the area of the Premises are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) or 20,000 square feet, whichever is greater, of the originally designated area.

(c) Notwithstanding the foregoing paragraphs (a) and (b), City may reduce the Agreement Premises in the following manner:

Six (6) months prior to every fifth anniversary of the Effective Date, City and Tenant shall calculate the average number of vehicles loaded and unloaded at the Premises ("Vehicle Throughput") on a per acre basis. In the event the following minimum Vehicle Thresholds are not met, the City may exercise the option to reduce the Agreement Premises by up to six (6) contiguous acres for each 5-year period upon providing written notice to Tenant:

- (i) if the Premise's average Vehicle Throughput in the prior five (5) years ending March 31, 2016 is less than 2,000 vehicles per acre per year; or
- (ii) if the Premise's average Vehicle Throughput in the prior five (5) years ending March 31, 2021 is less than 2,500 vehicles per acre per year.

**3.6 Radio Equipment.** Tenant shall coordinate with City's Harbor Department prior to installing any radio or telecommunications equipment to ensure that frequencies do not interfere with public safety communications or radio frequencies.

**3.7 City Right of Inspection.** City's authorized representatives shall have access to the Premises at any and all reasonable times to determine whether or not Tenant is complying with the terms and conditions of this Agreement, for fire and police/homeland security purposes, to investigate any incidents involving personal injury or property damage, or for any other purpose incidental to the rights and/or duties of City. The right of inspection hereby reserved to City shall impose no obligation on City to make inspections to ascertain the condition of the Premises, and shall impose no liability upon City for failure to make such inspection.

#### **Section 4. Uses.**

**4.1 Permitted Uses.** The Premises shall be used for the following purposes and no others: for receiving, storing, warehousing, servicing, handling, distributing, and assembling automobiles and other motor vehicles (including commercial and industrial equipment, boats and other watercraft) from various manufacturers for import or export, and for installing accessories thereon, and for purposes incidental thereto. Tenant may also receive, store, service, handle, distribute, assemble and install accessories on domestically manufactured motor vehicles that are transported by rail provided that such use does not interfere with the importing, exporting, storing or servicing of motor vehicles, or with the use of the premises by other assignees. Tenant may also use the premises for handling containers related to motor vehicle products or accessories,

provided such containers are handled on chassis only and in a manner as to require use of the least amount of space practicable. ("Permitted Uses").

**4.2 Limitations on Use.** Tenant shall not use or allow the Premises or any part thereof to be used for purposes other than the Permitted Uses without the prior written approval of Board (which approval may be withheld by the Board in its sole and absolute discretion), and subject to such restrictions, limitations and conditions as may be imposed by Board.

**4.3 Compliance with Applicable Laws.** At all times in its use and occupancy of the Premises and in its conduct of operations thereon, Tenant shall comply with all applicable federal, state, county, City or government agency laws, statutes, ordinances, standards, rules, requirements or orders in force on the Effective Date or thereafter enacted, promulgated or issued ("Applicable Laws"). In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by Executive Director or his or her authorized representative under authority of any such law, statute, ordinance, rule or regulation.

**4.4 Increased Insurance Risks.** Following the Effective Date, should an event occurring in or about the Premises cause either cancellation or increased rates with respect to any insurance that City may have on the Premises or on adjacent premises, or cause either cancellation or increased rates with respect to any other insurance coverage for the Premises or adjacent premises, upon receipt of written notice from City that cancellation of insurance or increased insurance rates is threatened or has occurred, Tenant immediately shall take appropriate steps to ensure that City is not adversely affected. In City's sole reasonable discretion, such steps may include Tenant: correcting the condition; providing any necessary insurance; paying the increased cost of City's insurance; and/or indemnifying City against any uninsured or underinsured loss on a claim.

**4.5 Waste or Nuisance.** Tenant shall not use the Premises in any manner that constitutes waste or nuisance.

**4.6 State Tidelands Act.** This Agreement, the Premises and Tenant'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. Tenant 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.

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**4.7 Load Limits.** City warrants and represents that City's Improvements, as described on Exhibit "B" attached hereto, shall be constructed to support the load limits specified in Exhibit "B." Tenant shall allow no loading in excess of such limits without the prior written consent of City's Harbor Department, which consent may be provided by a Harbor Engineer's Permit or a Heavy Lift Permit. Upon receipt of a notice from City that the load limits on Exhibit "B" have been exceeded, Tenant immediately shall take all appropriate steps to correct such condition and, irrespective of such notice, shall, as between City and Tenant, be solely responsible for any cost, expense or damage resulting therefrom.

**4.8 Temporary Assignments.** By issuing this Agreement, City does not grant to Tenant the sole or exclusive right to use the Premises. Whenever the Premises, excepting the office building occupied by Tenant, are not being used, in whole or in part, by Tenant for the Permitted Uses or if City requires the Premises on a project or emergency basis, Executive Director shall have the right, subject to Tenant's consent (which consent shall not be unreasonably withheld), to make temporary assignments to other persons, firms and/or corporations to use the Premises, or any part thereof, as provided in the Tariff. Any direct charges accruing against Tenant from the use of the Premises by a temporary user, and the allocated costs of utilities which Tenant furnishes to such temporary user, shall be paid by such temporary user. City and Tenant agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments.

**4.9 Wilmington Truck Route.** City and Tenant acknowledge that Tenant does not directly control the trucks serving the Premises. However, Tenant shall make its best efforts 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. Exhibit "C" hereto is a copy of the Wilmington Truck Route, and may be modified from time to time at the sole and absolute discretion of the Executive Director with written notice to Tenant.

**4.10 Tenant to Supply Necessary Labor and Equipment.** Tenant shall, at its sole cost and expense, provide all equipment and labor necessary to undertake the Permitted Uses; provided, however, that nothing contained herein shall prevent Tenant from using such equipment as may be installed by City at the Premises upon the payment to City of all applicable charges.

**4.11 Maintenance Areas.** Tenant shall not conduct or permit any maintenance of mobile or portable equipment on the Premises except in full compliance with all Environmental Laws, Port Environmental Policies, and Mitigation Measures as hereinafter defined.

**4.12 Liens.** Except where contested by Tenant in good faith in a court of competent jurisdiction, and except for nondelinquent liens arising from taxes or tax assessments, Tenant shall keep the Premises free from liens of any kind or nature arising out of its use and/or occupancy of the Premises, including any liens arising out of any labor performed for or materials furnished to or on behalf of Tenant on the

Premises. Tenant agrees that it will at all times defend and indemnify City from and against all claims for labor or materials in connection with the construction, erection or installation of improvements made by Tenant upon the Premises, or from additions or alterations made thereto, or the repair of the same, by or at the direction of Tenant, and the costs of defending against any such claim, including reasonable attorneys' fees. If a mechanic's or other similar lien shall at any time be filed against City's interest in the Premises, which is not contested by Tenant in good faith in a court of competent jurisdiction, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same or otherwise free the Premises from such claim or lien and any action brought to foreclose such lien or Tenant shall promptly furnish City with a bond in the amount of the lien plus twenty-five percent (25%) thereof issued by a surety company acceptable to Executive Director, securing City against payment of such lien and against any and all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien.

**Section 5. Compensation.**

**5.1 Definitions.**

5.1.1 Compensation Year. "Compensation Year" shall mean calendar year.

5.1.2 Tariff Charges. "Tariff Charges" shall mean all charges due and owing by Tenant under the Tariff on account of Tenant's use and occupancy of the Premises.

5.1.3 Initial Compensation Period. "Initial Compensation Period" shall mean the period commencing on the Effective Date and ending on the date of the first adjustment of the Minimum Annual Guarantee pursuant to the CPI, all as herein below defined.

5.1.4 CPI. "CPI" shall mean the Consumer Price Index for All Items, All Urban Consumers for the West Region area, 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor index selected by Executive Director in his or her sole reasonable discretion.

5.1.5 Initial Minimum Annual Guarantee ("MAG"). "Initial MAG" shall mean the monetary amount, in U.S. Dollars, Tenant shall pay to City for use of the Premises during the Initial Compensation Period, which monetary amount shall consist of Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000.)

5.1.6 Adjusted Minimum Annual Guarantee ("MAG"). "Adjusted MAG" shall mean the monetary amount, in U.S. Dollars, Tenant shall pay to City per Compensation Year following the Initial Compensation Period as periodically adjusted pursuant to the terms of this Section 5.

## 5.2 Payments Required of Tenant.

5.2.1 During the Initial Compensation Period, the annual rent shall be the greater of (a) the Initial MAG or (b) the number of vehicles and/or chassis units entering or leaving the premises in each year multiplied by then applicable tariff charges under Tariff No. 4, in its present form or as subsequently amended or superseded, including but not limited to, wharfage.

5.2.2 Following the Initial Compensation Period, Tenant shall pay to City the greater of (a) the Adjusted MAG in the amount which is generated pursuant to Section 5.3.1 below or (b) the number of vehicles and/or chassis units entering or leaving the premises in each year multiplied by then applicable tariff charges under Tariff No. 4, in its present form or as subsequently amended or superseded, including but not limited to, wharfage.

5.2.3 Tenant shall pay one-twelfth of the Initial MAG or Adjusted MAG, as applicable, without deduction, setoff, prior notice or demand on the first day of each month. Tenant shall determine and submit to City on or before January 31<sup>st</sup> of each year a statement of the number of vehicles and chassis entering and leaving the Premises during the preceding calendar year together with a calculation of the wharfage charge applicable thereto. In the event the wharfage charge is greater than the annual rent paid by Tenant for the calendar year ended, Tenant shall pay to the City within thirty (30) days from the date of City's statement the difference between the annual rent paid and the wharfage charge for such year. Tenant shall have the right, upon written notice to City, to contest the City's statement of the number of vehicles or chassis. In such event, Tenant and City each agree to cooperate in providing the other with copies of all documentation relating to such determination and agree to use their best efforts to resolve any discrepancies promptly. Tenant shall not be in default under the terms of this Agreement for nonpayment of any wharfage charges, to the extent disputed until thirty (30) days after final determination of such number by the parties or as a result of mediation, arbitration or legal proceedings.

5.2.4 Rent under Preferential Berth Assignment No. 77-34 during its holdover status and until the full execution of this Agreement, subsequent to the approvals required by City's Charter and Administrative Code, shall be Five Hundred Forty Eight Thousand Three Hundred Eighty Four Dollars (\$548,384.00) per month.

5.2.5 From the Effective Date to the full execution of this Agreement, Tenant shall, in addition to the current Compensation, pay in equal monthly installments within the first year after execution of this Agreement, the difference between the amount due pursuant to Section 5.2.4 and the compensation due pursuant to Section 5.2.1

5.2.6 In the event this Agreement terminates on a date other than the last day of a month, the monthly installment of Compensation due hereunder for such month shall be prorated on the basis of a thirty (30) day month.

### 5.3 Generation of Adjusted MAG.

#### 5.3.1 CPI Adjustments.

5.3.1.1 On July 1 of the first Compensation Year following the Effective Date (which date and subsequent anniversaries shall be referred to individually as "Adjustment Date"), the MAG shall be adjusted (in no event downward) to yield an Adjusted MAG. Such Adjusted MAG shall be equal to the product obtained by multiplying the MAG (without regard to any temporary abatement or reduction of MAG then or previously in effect pursuant to the provisions of this Agreement) by a fraction, the numerator of which is the CPI on the Adjustment Date and the denominator of which is the CPI on July 1 of the Compensation Year preceding the Compensation Year in which the Adjustment Date occurs.

5.3.1.2 Following the generation of the first Adjusted MAG pursuant to Section 5.3.1.1, on each subsequent Adjustment Date during the term of this Agreement or any holdover, the then-applicable Adjusted MAG shall be adjusted (in no event downward) to yield a new Adjusted MAG. Such new Adjusted MAG shall be equal to the product obtained by multiplying the Adjusted MAG applicable on the Adjustment Date (without regard to any temporary abatement or reduction of MAG then or previously in effect pursuant to the provisions of this Agreement) by a fraction, the numerator of which is the CPI on the Adjustment Date and the denominator of which is the CPI on July 1 of the Compensation Year preceding the Compensation Year in which the Adjustment Date occurs.

5.3.1.3 The formula illustrating the computation applicable to Section 5.3.1.1 and Section 5.3.1.2 is as follows:

$$\text{Adjusted MAG} = \text{Then Applicable MAG} \times \frac{\text{July 1 CPI of current year}}{\text{July 1 CPI of previous year}}$$

#### 5.3.2 Five-Year Rate Adjustments.

In addition to and not as a substitute for the CPI adjustments required by Section 5.3.1, on every fifth anniversary of the Effective Date, the then-applicable Adjusted MAG shall be adjusted (in no event downward), with such adjustments established by order of Board. The five-year periods in which such adjusted rates shall apply shall be referred to as "Adjusted 5-Year Periods."

Not fewer than nine (9) months before the commencement of each Adjusted 5-Year Period, Tenant and City shall undertake best efforts to negotiate and mutually agree upon the Adjusted MAG that shall apply at the commencement of each such period. If, despite best efforts, City and Tenant are unable to mutually agree upon such Adjusted MAG, such value shall be adjusted in the following manner: (i) City may, upon written notice from Executive Director, establish such value at amounts not to exceed one hundred twenty-five percent (125%) of the value in effect at the end of the fifth Compensation Year of

the five-year period preceding the Adjusted 5-Year Period, which shall be paid in the same manner as provided herein until completion of the procedure set forth below or (ii) either City or Tenant upon written notice to the other may, no sooner than nine (9) months prior to the commencement of the upcoming Adjusted 5-Year Period, initiate commencement of the process set forth below ("Appraisal Process").

(a) City and Tenant shall utilize best efforts to agree upon, within ten (10) calendar days following the commencement of the Adjusted 5-Year Period, a single appraiser to determine the fair rental value of the Premises (including total property, land and/or improvements) based upon the existing use as set forth in Exhibit "D" hereto ("Market Rent"), which appraiser shall possess the qualifications set forth on the attached Exhibit "E." Such appraiser's determination shall be binding upon the parties and shall be retroactive to the commencement of the applicable 5-year period. If, despite best efforts, City and Tenant cannot agree upon such single appraiser within such ten (10) calendar days, City and Tenant shall, within sixty (60) calendar days after the expiration of such ten (10) calendar day period, appoint one appraiser each to determine Market Rent pursuant to Exhibit "D" and shall provide written notice of such appointment to the other party, which notice shall summarize or attach the retained appraiser's qualifications and certify that such appraiser has been retained to determine Market Rent pursuant to Exhibit "D."

(b) If either party fails to appoint an appraiser and provide the required written notice thereof within such sixty (60) calendar day period, the one appraiser appointed shall be directed to determine Market Rent pursuant to Exhibit "D" and such appraiser's determination shall be binding upon the parties and shall be retroactive to the commencement of the applicable 5-year period.

(c) If City and Tenant appoint appraisers within such sixty (60) day period, such two appraisers so appointed shall be directed to use good faith efforts to separately determine Market Rent pursuant to Exhibit "D" within ninety (90) calendar days of the expiration of the aforementioned sixty (60) day period. The appraisal generated on behalf of City shall be referred to as "City Appraisal," and shall be generated at City's sole cost and expense. The appraisal generated on behalf of Tenant shall be referred to as "Tenant Appraisal," and shall be generated at Tenant's sole cost and expense. City and Tenant thereafter shall exchange appraisals. If the determinations of the City Appraisal and the Tenant Appraisal are within ten percent (10%) of one another, the Market Rent shall be the average of the two and shall be binding upon the parties.

(d) If the determination of Market Rent of the two appraisers differs by more than ten percent (10%), then the two appraisers shall choose a third appraiser possessing the qualifications set forth on Exhibit "E" within thirty (30) calendar days thereafter who shall not make

an independent determination of Market Rent, but rather shall determine only which, the City Appraisal or the Tenant Appraisal, is closest to that third appraiser's estimate of Market Rent, and Market Rent shall be equal to the then-applicable amount so determined in the appraisal selected by such third appraiser. If the two appraisers fail to select a third appraiser within such time, the determination of Market Rent shall be submitted to final and binding arbitration at the request of either City or Tenant before one arbitrator appointed by the American Arbitration Association ("AAA") at Los Angeles, California acting pursuant to AAA's Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. The arbitrator shall review at minimum the scope of work attached hereto as Exhibit "D," and copies of the City Appraisal and the Tenant Appraisal, but shall not make an independent determination of Market Rent, but rather shall determine only which, the City Appraisal or the Tenant Appraisal, is closest to the arbitrator's estimate of Market Rent, and Market Rent shall be equal to the then-applicable amount so determined in the appraisal selected by such arbitrator. Such determination of the arbitrator shall be binding on the parties and shall be retroactive to the commencement of the applicable 5-year period. Fees and costs incurred by such arbitrator and/or AAA shall be borne equally by City and Tenant.

#### 5.3.3 NOS Tariff Rate Adjustments.

The MAG is subject to any increase in the Tariff rate for Merchandise Not Otherwise Specified ("NOS") following the Effective Date. There will be no CPI adjustments required by Section 5.3.1 for Calendar Years where the NOS Tariff rate is increased.

#### **5.4. Requirements Applicable to Tenant's Payment of Compensation.**

5.4.1 Tenant's obligations to pay compensation to City according to the terms and conditions of this Section 5 shall be absolute and unconditional and shall be unaffected by any circumstance, including, without limitation, off-set, counterclaim, recoupment, defense or other right which Tenant may have against City.

5.4.2 Tenant shall render its payments at City's Harbor Department Administration Building or any other place that City from time to time may designate in writing. Payment shall be made in U.S. Dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

5.4.3 If any payment by Tenant is for a period shorter than one calendar month, the compensation for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/365 of the total annual compensation. All other payments or adjustments that are

required to be made under the terms of this Agreement and that require proration on a time basis shall be prorated on the same basis.

5.4.4 If, by reason of strikes, other labor disputes, lockouts, or other work stoppages of which Tenant did not directly or indirectly cause and/or to which Tenant is not a party ("labor disturbance"), occurring at the Premises and lasting more than (30) days, Tenant is prevented from making substantial use of Premises to undertake the Permitted Uses, the rent for the period during which the labor disturbance occurs shall be proportionately adjusted, commencing the thirty-first (31<sup>st</sup>) day after commencement of such labor disturbance, provided Tenant has, prior to such date, given City written notice of such labor disturbance, and such reduction shall be applicable from and after said thirty-first (31<sup>st</sup>) day until Tenant is able to make substantial uses of the Premises to undertake the Permitted Uses.

5.4.5 As a condition precedent to the effectiveness of this Agreement, Tenant shall deposit the sum of One Million Two Hundred Eight Thousand Three Hundred Thirty Three Dollars (\$1,208,333.00) with Board. Said deposit shall be held as a deposit to cover delinquent rent. In the event that all or part of such deposit is used to apply against rent due and unpaid, Tenant shall immediately make another deposit in an amount equal to the amount so used, so that at all times during the term of this Agreement said deposit shall be maintained in the sum stated above.

5.4.6 Payments required to be made by this Section 5 which have not been paid within ten (10) calendar days of the date such payments are due ("grace period") shall be subject to a service charge assessed as simple interest at the rate of 1/30 of two percent (2%) of the amount remaining unpaid each day. Tenant acknowledges that it knows the day of the month its payments hereunder are due and that the grace period commences from the date such payments are due to be made, not the date of City's invoice, if any. Said service charge shall be imposed whether or not a deposit required by Section 5.4.5 is applied to the amount due. City has the unqualified right, upon thirty (30) days' prior written notice to Tenant, to change the level of the delinquency service charge.

## **Section 6. Tenant's Environmental Obligations During Term of Agreement.**

### **6.1 Definitions.**

6.1.1 Environmentally Regulated Material. "Environmentally Regulated Material" shall mean any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local or governmental authority having jurisdiction over the Premises. Environmentally Regulated Material includes but is not limited to:

- (a) Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act

of 1980 ("CERCLA") (42 U.S.C. Sections 9601-9675) in its present or successor form;

(b) "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. Sections 6901-6992k) in its present or successor form;

(c) 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);

(d) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 U.S.C. Sections 2011-2297g-4 in its present or successor form;

(e) Asbestos in any form or condition;

(f) Polychlorinated biphenyls ("PCBs") and substances or compound containing PCBs; and

(g) Petroleum products.

6.1.2 Environmental Laws. "Environmental Laws" shall mean the environmental laws and implementing regulations which are a subset of the Applicable Laws defined in Section 4.3 and which are applicable to the Premises and/or Tenant's use and/or occupancy thereof, in their form as of the Effective Date or as subsequently amended, or as may be promulgated during the term of this Agreement or any holdover. Such Environmental Laws include but are not limited to:

(a) CERCLA and its implementing regulations;

(b) RCRA and its implementing regulations;

(c) The federal Clean Water Act (33 U.S.C. Sections 1251-1376, et seq.) and its implementing regulations;

(d) The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations;

(e) The federal Clean Air Act (42 U.S.C. Sections 7401-7601) and its implementing regulations;

(f) The California Clean Air Act of 1988 and its implementing regulations;

(g) The state Lewis Air Quality Act of 1976 and its implementing regulations; and

(h) 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, the Premises and/or Tenant's use and/or occupancy thereof;

6.1.3 Term Release. "Term Release" shall mean a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Premises during the term of this Agreement or any holdover, whether caused by Tenant or a third-party (other than invitees under a temporary assignment pursuant to Section 4.8 or third-parties whose access to the Premises has been requested by City pursuant to Section 3.3), that contaminates or threatens to contaminate City's Improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises).

6.1.4 Term Contamination. "Term Contamination" shall mean all contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises) resulting from all Term Releases.

6.1.5 Term Characterization Work Plan. "Term Characterization Work Plan" shall mean the written work plan submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that details all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) caused by a Term Release or Term Releases and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with Environmental Laws, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles "Site Characterization Guidance Manual" as it exists as of the Effective Date or as it may be subsequently amended ("Site Characterization Guidance Manual"). Tenant acknowledges receipt of a copy of such Manual. Following the Effective Date, Tenant shall be solely responsible for obtaining and maintaining the current version of the Site Characterization Guidance Manual.

6.1.6 Term Characterization Report. "Term Characterization Report" shall mean the written report submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that details all findings made as a result of performing the Term Characterization Work Plan and that conforms with the Site Characterization Guidance Manual.

6.1.7 Term Remediation Action Plan. "Term Remediation Action Plan" shall mean the written plan submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that addresses remediation of all contamination caused by Environmentally Regulated Material in soil, harbor waters, groundwater and sediment as identified in the Term Characterization Report, that conforms with Tenant's obligations as set forth below in Section 6.2 and that includes a discussion of remedial action alternatives for restoration of the Premises and a timetable for each phase of restoration. The Term Remediation Action Plan shall comply with Environmental Laws, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual.

## **6.2 Tenant Responsibility for Term Contamination.**

6.2.1 Tenant shall remediate or cause the remediation of any Term Releases by removing or effecting the removal of all contaminated soil, water, groundwater, sediment or other material it may place or may have placed on site such that no encumbrances, such as deed or land use restrictions, be imposed on the property as a result of such Term Releases and/or Term Contamination.

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

6.2.3 City and Tenant acknowledge that prior to the Effective Date, the Premises were occupied by users including Tenant for approximately twenty five (25) years under an entitlement separate from this Agreement ("Tenant Prior Occupancy") and others and that as a result of such prior use and occupancy, the Premises on the Effective Date possess levels of contamination depicted in the Baseline Report ("Exhibit J" and "Exhibit J-1", "Existing Contamination"). As to City, Tenant bears no responsibility for Existing Contamination.

6.2.4 Tenant acknowledges and agrees that a presumption shall exist that any contamination on the Premises constitutes Term Contamination for which, as between City and Tenant, Tenant is solely responsible. City shall provide written notice of the existence of any such contamination to Tenant. Tenant may rebut

such presumption by providing to City, within ninety (90) days of City's written notice, conclusive evidence demonstrating that such contamination is not Term Contamination. Otherwise, such presumption shall be deemed confirmed making Tenant solely responsible for such contamination. Whether any information submitted by Tenant rebuts the aforementioned presumption shall be within City's sole and absolute discretion, exercised reasonably and in good faith. This provision shall survive the expiration or earlier termination of this Agreement.

### **6.3 Environmentally Regulated Material on Premises.**

Tenant shall not cause or permit any Environmentally Regulated Material 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: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material; and (ii) Environmentally Regulated Material handled as cargo while undertaking a Permitted Use. Tenant shall handle all such Environmentally Regulated Material in strict compliance with Environmental Laws in effect during the term of this Agreement or any holdover.

### **6.4 Tenant Obligations In the Event of a Term Release.**

6.4.1 Upon occurrence of a Term Release, Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 6.4.2 through 6.4.11. Executive Director may alter, supplement or delete any of the procedures set forth in Sections 6.4.2 through 6.4.11 at his or her sole reasonable discretion.

6.4.2 Immediately, to facilitate emergency or other response, and in accordance with Environmental Laws and in no event later than fourteen (14) calendar days following its discovery of the Term Release, Tenant shall provide a written report to City that details all known information regarding such release and any resultant contamination, which information shall include but not be limited to: (i) the date, time and specific location of the release; (ii) the specific type and quantities of materials released; (iii) the cause(s) or suspected cause(s) of the release; (iv) photographs of the release and any and all equipment or fixtures involved; (v) corrective action taken or planned to be taken by or on behalf of Tenant to address the cause or suspected cause of the release; and (vi) the names and contact information of individuals and entities acting for or on behalf of Tenant to address the release, including environmental consultants.

6.4.3 According to a schedule prescribed in writing by Executive Director or the applicable governmental agency with jurisdiction, Tenant shall make or cause to be made any and all necessary corrective actions to address the cause or suspected cause of the Term Release, including but not limited to equipment repairs and/or replacements.

6.4.4 Within thirty (30) calendar days following its discovery of the Term Release, Tenant shall provide written notification of the Term Release and any resultant contamination to all applicable regulatory agencies as required by Environmental Laws, with copies of such notification(s) to City;

6.4.5 Within thirty (30) calendar days following its discovery of the Term Release, Tenant shall provide written notification to City of the consultant(s), if any, Tenant plans to utilize in connection with the Term Characterization Work Plan. Such written notification shall set forth the names of the individuals forming the consultant team, and their qualifications. City shall approve such consultants in its sole reasonable discretion.

6.4.6 Subject to any schedule or protocol required by any governmental agency with jurisdiction which schedule or protocol shall take precedence over these Sections 6.4.6 through and including 6.4.11, within thirty (30) calendar days following City's approval of Tenant's consultant, Tenant shall submit the Term Characterization Work Plan to City for its written approval. Provided Tenant delivers to City a complete Term Characterization Work Plan as hereinabove required, City shall use its best reasonable efforts to expeditiously approve or disapprove such plan. Tenant shall provide additional information upon request of City if City deems the Term Characterization Work Plan inadequate.

6.4.7 Within forty-five (45) calendar days following City's transmittal of its written approval of the Term Characterization Work Plan, Tenant shall commence and complete investigation and testing in accordance with the plan, and shall provide to City the results of such investigation and tests as they become available.

6.4.8 Within one hundred twenty (120) calendar days following City's written approval of the Term Characterization Work Plan, Tenant shall submit the Term Characterization Report to City for its written approval. Tenant shall provide additional information upon request of City if City deems the Term Characterization Report inadequate. Concurrently, Tenant shall submit a report detailing all corrective action taken by Tenant to address the cause or suspected cause of the Term Release. Tenant shall supplement such corrective action if so requested by City.

6.4.9 If so requested in writing by Executive Director, within sixty (60) calendar days following such request, Tenant shall prepare at its sole cost and expense and submit to City for its approval the Term Remediation Action Plan, together with a list of the consultants Tenant proposes to execute such plan and such consultants' qualifications (both organizationally and broken down by consultant team member), both of which City shall approve in its sole reasonable discretion. Provided Tenant delivers to City a complete Term Remediation Action Plan, City shall use its best efforts to approve or disapprove such plan in a timely manner. Tenant shall provide additional information upon request of City if City deems the Term Remediation Action Plan inadequate.

6.4.10 Within a timeframe reasonably established and communicated to Tenant by City following City's written approval of the Term Remediation Action Plan, Tenant shall complete or cause the completion of all work contemplated by the Term Remediation Action Plan. If, in the sole and absolute determination of Executive Director, such contamination resulting from the Term Release cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all soil, water, groundwater, sediment or other material contaminated by the Term Release and, in the cases of soil or sediment contamination, replace same with clean soil or material suitable to City.

6.4.11 The adequacy of Tenant's execution of any Term Remediation Action Plan shall be within the sole reasonable discretion of Executive Director. Tenant shall notify Executive Director in writing when it believes it has completed all work contemplated by the Term Remediation Action Plan. If, upon investigation, Executive Director reasonably concludes that additional tasks must be fulfilled in order to complete all work contemplated by the Term Remediation Action Plan, Tenant shall complete such tasks forthwith. Upon fulfillment of such tasks, Tenant again shall notify Executive Director in writing, which will re-initiate the approval process for execution of a Term Remediation Action Plan.

6.4.12 If Tenant fails to wholly or partially fulfill any obligation set forth in the preceding Sections 6.4.2 through 6.4.11, City may (but shall not be required to) take all steps it deems necessary to fulfill such obligation. Any action taken by City shall be at Tenant's sole cost and expense and Tenant shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any such action it takes.

## **6.5 Environmental Compliance.**

6.5.1 In its use and occupancy of the Premises, Tenant shall comply (and shall immediately halt and remedy any incident of non-compliance) with: (a) Environmental Laws; (b) all applicable environmental policies, rules and directives of City's Harbor Department "Port Environmental Policies" as set forth on Exhibit "F-1" hereto; and (c) the Mitigation Monitoring and Reporting Program and associated documentation forms set forth collectively in Exhibit "F-2" hereto.

6.5.3 Following the Effective Date, upon mutual written agreement of Board and Tenant, Board may revise Exhibit "F-2."

**6.6 Environmental Audits.** Tenant shall perform annual written audits of its Mitigation Monitoring and Reporting Program. The results of such audits shall be maintained on Premises for review by City. City shall have the right to conduct, at its sole cost and expense, periodic audits of Tenant's compliance with the Mitigation Monitoring and Reporting Program and management of Environmentally Regulated Material. Tenant shall provide access to backup materials supporting the Mitigation Monitoring and Reporting Program necessary for City to conduct such audits. City shall provide Tenant with copies of any written reports or results of such audits promptly upon completion of such documents.

**6.7 Waste Disposal.** In discharging its obligations under this Section 6, if Tenant disposes of any soil, material or groundwater contaminated with Environmentally Regulated Material, within thirty (30) days of Tenant's receipt of original documents, Tenant 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.

**6.8 Laboratory Testing.** In discharging its obligations under this Section 6, Tenant 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 Agreement, Tenant hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data gathered. As used in this Section 6.8, "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

**6.9 Survival of Obligations.** Except as otherwise provided in this Section 6, this Section 6 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

## **Section 7. Alteration of Premises by Tenant.**

**7.1 Alterations Require City Authorization.** Tenant acknowledges City's interest in controlling the manner in which physical changes are made to the Premises after the Effective Date and covenants that, other than maintenance and repair undertaken in compliance with Section 8, it shall make no improvements, alterations, additions or changes to the Premises including but not limited to the construction of works or improvements or the changing of the grade of the Premises ("Alteration") without obtaining City's prior written authorization to undertake such Alteration.

**7.2 Authorization Procedure.** Tenant shall obtain written authorization to undertake an Alteration according to the following procedure:

7.2.1 If Tenant desires to undertake an Alteration, Tenant shall submit to City a complete Application for Discretionary Projects that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Such drawings, plans and specifications shall be prepared and stamped by a licensed engineer registered in the State of California. Tenant bears sole responsibility for the completeness of such submittal.

7.2.2 The Harbor Engineer shall have the right to require changes to the drawings, plans and specifications Tenant submits in connection with such Application for Discretionary Projects. If Harbor Engineer orders such a change and Tenant believes that such a change will have any detrimental effect on the structural integrity of the works, project or improvements, or increase any hazard to life or property, Tenant shall immediately notify him/her. If Tenant fails to

provide such notification, the drawings, plans and specifications shall be treated for all purposes as if they had been originally prepared by Tenant, as changed. Harbor Engineer's approval of Tenant's submittal, if any, will be reflected by issuance of a Harbor Engineer's General Permit.

7.2.3 Tenant acknowledges that, in addition to obtaining a Harbor Engineer's General Permit, Tenant additionally may be required to obtain permits and authorizations with respect to the proposed Alteration from City, federal and state bodies ("Non-Harbor Department Permits"), the issuance of which City's Harbor Department does not control. In any event, obtaining the Harbor Engineer's General Permit and any Non-Harbor Department Permits necessary to undertake the proposed Alteration is and shall be the sole responsibility of Tenant. Pursuant to Section 4.3, every Alteration made by Tenant shall conform with Applicable Laws, as well as with the plans and specifications as approved by Harbor Engineer.

7.2.4 Tenant acknowledges that issuance of the Harbor Engineer's General Permit by City's Harbor Department shall be conditioned upon Tenant's demonstration that it has obtained all other permits and authorizations with respect to the proposed Alteration as may be required by entities other than City's Harbor Department.

7.2.5 Upon completion of all work necessary to construct the Alteration, Tenant shall provide City with written confirmation that such work conformed with all permits issued, and "as-built" plans and/or drawings for such work in a form acceptable to Harbor Engineer. Tenant acknowledges that City may perform inspections of the Alteration to ensure that such Alteration conformed with the permits issued. Tenant shall undertake any corrective measures reasonably requested by City as a result of such inspections.

**7.3 Notice of Commencement and Completion of Work.** Tenant shall give advance written notice to Harbor Engineer of the date it will commence any construction. Within thirty (30) days of completion of construction, Tenant shall provide written notice to Harbor Engineer of the date of such completion, copies of "as-built" plans for such construction, copies of all permits issued in connection with such construction and copies of all documentation issued in connection with such completed construction, including but not limited to inspection reports and certificates of occupancy.

**7.4 Cost of Permits.** Tenant, at its sole cost and expense, shall obtain all permits necessary for such construction and shall require by contract that its construction contractors and subcontractors comply with all applicable federal, state, regional, and local statutes, ordinances, rules and regulations.

**7.5 Cost of Construction.** All construction by Tenant pursuant to this Section 7 shall be at Tenant's sole cost and expense. Tenant shall keep the Premises and improvements constructed free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto.

**7.6 Property of Tenant.** All property brought onto the Premises by Tenant, or in the care, custody or control of Tenant, to undertake the Permitted Uses or otherwise shall be and remain the property of Tenant, subject to the terms and conditions contained herein, and shall be there at the sole risk of Tenant. Tenant hereby waives all claims against City with respect to such property, except for injury or damage to such property caused by City's sole negligence or willful misconduct.

**7.7 Subsurface Improvements.** Tenant shall maintain on the Premises as-built drawings that identify the precise position of any pipelines, utilities or improvements of any type Tenant places on the Premises, whether placed above or below ground. Upon twenty four (24) hours' written notice by Executive Director, Tenant shall undertake at its sole cost and expense whatever measures are reasonably necessary, including subsurface exploration for any pipeline or any other substructure under Tenant's control or servicing Tenant's operation within the Premises granted herein, to precisely locate the position of such items if City considers such as-built drawings insufficient to locate such items. Tenant agrees any work necessary to locate such items or any damage which may result from the location being incorrectly described, whether incurred by Tenant or City, shall be borne exclusively by Tenant. Exploration and preparation of all documentation recording the location of lines or structures shall be completed within the time specified in said notice. The subsurface exploration shall verify the vertical as well as horizontal location of all pipelines and substructures. Documentation reflecting the results of said exploration shall be filed with the Harbor Engineer.

If Tenant neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any pipeline or any other substructure under Tenant's control or servicing Tenant's operation within the Premises granted herein, the City shall have the right to enter onto the Premises and perform the work designated in the notice. All subsurface exploration required by the provisions contained herein whether performed by Tenant or City shall be performed at Tenant's expense. In addition, Tenant agrees to bear the cost of any and all damage of whatever nature caused by any act, omission, or negligence of the City and any and all of its boards, officers, agents, consultants, and employees in the performance of said subsurface exploration as required by this provision. Work performed by City or City's contractors under this provision does not alter Tenant's obligation to maintain the Premises in a safe condition, both during and after completion of the work.

If during the term of this Agreement Tenant requires the placement of pipelines or undertakes any pipeline operations on the Premises, Tenant shall notify the City in writing at least 180 days prior to installation and this Agreement shall be amended to include requirements regarding Tenant's compliance with pipeline rules, pipeline testing and inspection requirements and any other related language deemed necessary by City.

**7.7.1 Rules Governing Underground Storage Tanks.** After installation, and in any event for the duration of this Agreement, Tenant shall maintain, operate and remove all underground storage tanks in strict compliance with all

federal, state and local rules, regulation, statues and ordinances, which includes but is not limited to: Title 40 Code of Federal Regulations, Part 280; California Health and Safety Code, Division 20, Chapter 6.7 and 6.75; California Code of Regulations, Title 23, Chapters 16 and 18; Los Angeles Municipal Code, Article 7, Chapter V, Divisions 14, 31 and 100; South Coast Air Quality Management District, Rules 461, 1149 and 1170.

7.7.2 Relocation of Subsurface Improvements. At any time during the term of this Agreement, Board shall have the right to make any such change in the route or location of any subsurface improvement constructed or maintained on the Premises by Tenant pursuant to the authority of this Agreement as may be required or made necessary for the progress of harbor development or the performance of any work or improvement within the jurisdiction of Board. If Board shall determine that any such change or relocation is necessary, Board shall give at least ninety (90) days' written notice to Tenant and the work of removal and relocation shall be completed within such time after said written notice as shall be fixed in said notice. The cost of any such removal and relocation shall be borne by Tenant.

**7.8 Signs.** Tenant shall not erect or display, or agree to be erected or displayed, on the Premises, or upon works, buildings and improvements made by Tenant, any advertising matter of any kind, including signs, without first obtaining the written consent of Executive Director and a Harbor Engineer's General Permit. Tenant shall post, erect and maintain on the Premises such signs as Executive Director may direct.

## **Section 8. Maintenance and Repair.**

Except for those items identified on Exhibit "G" hereto (which Exhibit "G" may be amended by Executive Director in his or her sole reasonable discretion), at all times, Tenant, at its sole cost and expense, shall keep and maintain the Premises, and all buildings, works and improvements of any kind thereon, including the improvements existing on the Premises as of the Effective Date and City's Improvements as depicted on Exhibit "B," in good and substantial repair and condition and shall be responsible for and perform all necessary inspection, maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements. Tenant shall obtain any permits, including but not limited to those issued by City, necessary for such maintenance and repair. City shall reimburse Tenant for any repairs made necessary by use of the Premises by a temporary user pursuant to Section 4.8.

**8.1 Failure to Maintain.** If Tenant fails to make any repairs or to perform required maintenance within thirty (30) days after receipt of notice from City to do so, City may, but shall not be obligated to, make such repairs or perform such maintenance. Tenant shall reimburse City for City's costs (as defined in Section 8.2) within thirty (30) days after receipt of City's invoice for work performed. In the event Tenant shall commence such repairs and diligently prosecute the same to completion or shall begin to perform the required maintenance within the thirty (30) day period, City shall refrain

from commencing or prosecuting further any repairs or performing any required maintenance until the work has been completed by Tenant. Tenant shall thereafter pay on demand City's costs incurred pursuant to this Section 8.1 prior to Tenant's commencement of repair or maintenance. The making of any repairs or the performance of maintenance by City, which is the responsibility of Tenant, shall in no event be construed as a waiver of the duty or obligation of Tenant to make future repairs or perform required maintenance as herein provided.

**8.2 City's Costs.** "City's costs" for purposes of this Section 8 shall include, in City's sole reasonable discretion, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, services, equipment usage, and other indirect or overhead expenses arising from or related to maintenance, repair or replacement work performed by or on behalf of City.

**8.3 Litter and Debris.** Tenant, at its sole cost and expense, shall provide sufficient dumpsters or other like containers for trash collection and disposal and keep the Premises free and clear of rubbish, debris and litter at all times. Tenant shall perform periodic inspections and cleaning of the storm water catch basins (including filters), maintenance holes, and drains, maintaining the submerged land underlying the water berthing area at the Premises free and clear of debris from the wharf and from vessels, and cargo loading and unloading operations of vessels berthed at said berths in connection with Tenant's undertaking of the Permitted Uses. Tenant, at its sole cost and expense, further shall keep and maintain the Premises in a safe, clean and sanitary condition in accordance with all applicable federal, state, municipal and other laws, ordinances, rules and regulations.

**8.4 Fire Protection Systems.** All fire protection sprinkler systems, standpipe systems, fire hoses, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems, with the exception of hydrant systems, or appliances which have been or may be installed on the Premises shall be maintained and repaired by Tenant, at its cost, in an operative condition at all times.

**8.5 City Inspections.** Tenant shall provide personnel to accompany City's representatives on periodic inspections of the Premises to determine Tenant's compliance with this Agreement.

**8.6 Services and Utilities.** Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the Premises or used in connection with its use and occupancy, including but not limited to heat, gas, power, telephone, light, and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier, including City.

**8.7 City Repairs.** The City shall perform required repairs due to deferred maintenance of the existing wharves at Berths 196 to 199, which will restore the wharves to their original design specifications. The City shall pay all costs associated with such repairs, except for the costs associated with wharf damage at Berth 198 as stated below.

The parties agree that the necessary joist repairs at Berth 198 are attributable to Tenant's unpermitted heavy cargo operations, and therefore Tenant shall pay the City \$170,000 within thirty (30) days of City's initiation of repairs at Berth 198 pursuant to this Section 8.7.

**Section 9. Default and Termination.**

**9.1 Tenant's Default.** The occurrence of any of the following shall constitute a default by Tenant under this Agreement:

(a) Tenant's failure to pay when due any rent required to be paid under this Agreement if the failure continues for three (3) days after written notice of the failure from City to Tenant;

(b) Tenant's failure to perform any other obligation under this Agreement, if Tenant fails to commence to cure the failure within thirty (30) days after delivery of written notice of the failure from City to Tenant, or if the failure continues for ninety (90) days after delivery of such notice;

(c) Tenant's abandonment of the Premises, including but not limited to Tenant's absence from the Premises for three (3) consecutive days (excluding Saturdays, Sundays, and California legal holidays) while in default of any provision of this Agreement;

(d) To the extent permitted by law:

(1) A general assignment by Tenant or any guarantor of the Agreement for the benefit of the creditors without written consent of City;

(2) The filing by or against Tenant, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

(3) The appointment of a trustee or receiver to take possession of all or substantially all the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved;

(4) Any execution or other judicially authorized seizure of all or substantially all the assets of Tenant located on the Premises, or of Tenant's interest in this Agreement, unless that seizure is discharged within thirty (30) days;

(e) The undertaking of an unreasonable or improper use on the Premises.

**9.2 Replacement of Statutory Notice Requirements.** When this Agreement requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor statute. If City serves a statutory notice pursuant to Code of Civil Procedure Section 1161 et seq. to declare Tenant's default, City may proceed to obtain a judgment and/or order for possession and/or for any other remedy available at law and/or equity without further notice. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Agreement) in the manner required by Section 15.9 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure Section 1162 or any similar or successor statute.

**9.3 City's Remedies on Tenant's Default.** On the occurrence of a default by Tenant, City shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to City at law or in equity. These remedies are not exclusive but are instead cumulative.

9.3.1 Termination of Agreement. City may terminate this Agreement and recover possession of the Premises. Once City has terminated this Agreement, Tenant shall immediately surrender the Premises to City. On termination of this Agreement, pursuant to Civil Code Section 1951.2 or its successor, City may recover from Tenant all of the following:

(a) The worth at the time of the award of any unpaid rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(b) The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(c) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term of the Agreement after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);

(d) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform obligations under this Agreement, including, without limitation, restoration expenses, expenses of improving the Premises for a new tenant (whether for the same or a different use), brokerage commissions, and any special concessions made to obtain a new tenant; and

(e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by Applicable Law.

9.3.2 Continuation of Agreement in Effect. City shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the City may continue the Agreement in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if City does not elect to terminate this Agreement on account of any default by Tenant, City may enforce all of City's rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

9.3.3 Tenant's Subleases. Whether or not City elects to terminate this Agreement on account of any default by Tenant, City may:

(a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises; or

(b) Choose to succeed to Tenant's interest in such an arrangement. If City elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by City of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

**9.4 Form of Payment After Default.** If Tenant fails to pay any amount due under this Agreement within ten (10) days after the due date or if Tenant draws a check on an account with insufficient funds, City shall have the right to require that any subsequent amounts paid by Tenant to City under this Agreement (to cure a default or otherwise) be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to City, or other form approved by City despite any prior practice of accepting payments in a different form.

**9.5 Acceptance of Rent Without Waiving Rights.** Under Section 15.6, City may accept Tenant's payments without waiving any rights under this Agreement, including rights under a previously served notice of default. If City accepts payments after serving a notice of default, City may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

## **Section 10. Force Majeure.**

City and Tenant shall not be deemed to be in default in the performance of the terms, covenants or conditions of this Agreement, if either party is prevented from performing said terms, covenants or conditions by causes beyond its control, including, without limitation, acts of God, the public enemy or public riots; failures due to nonperformance or delay of performance by suppliers or contractors; any order, directive or other interference by municipal, state, federal or other governmental official or agency (other than City's failure or refusal to issue permits for the construction, use

or occupancy of City's Improvements or the Premises); any catastrophe resulting from the elements, flood, fire, explosion, or any other cause reasonably beyond the control of a party, but excluding strikes or other labor disputes, lockouts or work stoppages. In the event of the happening of any of such contingencies, the party delayed by force majeure shall immediately give the other party written notice of such contingency, specifying the cause for delay or failure, and such notice from the party delayed shall be prima facie evidence that the delay resulting from the causes specified in the notice is excusable. The party delayed by force majeure shall use reasonable diligence to remove the cause of delay, and if and when the contingency which delayed or prevented the performance of a party shall cease or be removed, the party delayed shall notify the other party immediately, and the delayed party shall recommence its performance of the terms, covenants and conditions of this Agreement. During any period in which the Premises are not reasonably useable in whole or in part for the Permitted Uses by reason of any cause contemplated by this Section 10, Tenant shall not be relieved of its obligation to pay any compensation already due to City at the time of the occurrence.

## **Section 11. Restoration and Surrender of Premises.**

**11.1 Tenant's Restoration Obligations.** On or before the Expiration Date, or any sooner termination of this Agreement, other than by termination pursuant to Section 9 of this Agreement, unless otherwise excused in writing by Executive Director, Tenant shall quit and surrender possession of the Premises to Board leaving all improvements depicted on Exhibit "B" (including but not limited to City's Improvements) in at least as good and usable a condition, acceptable to Executive Director, as the same were in at the time of the first occupation thereof by Tenant under this Agreement, ordinary wear and tear excepted. However, the exception for wear and tear shall not entitle Tenant to damage paving installed by City or any unpaved areas regardless of the nature of Tenant's operations on the Premises. If the condition of the Premises is upgraded during the term of this Agreement, such as by maintenance dredging, Tenant shall restore the Premises to the upgraded condition. Tenant agrees to remove all debris and sunken hulks from channels, slips and water areas within or fronting upon Premises not solely caused by City. Tenant expressly waives the benefits of the "Wreck Act" (Act of March 3, 1899) 33 U.S.C. Section 401 et seq. and the Limitation of Liability Acts (March 3, 1851, c. 43, 9 Stat. 635) (June 26, 1884, c. 121, Sec. 18, 23 Stat. 57) 46 U.S.C. 189 (Feb. 13, 1893, c. 105, 27 Stat. 445) 46 U.S.C. Sec. 190-196 and any amendments to these Acts if it is entitled to claim the benefits of such Acts. If City terminates this Agreement pursuant to Section 9, Tenant is also obligated to restore the Premises as provided above or to pay the cost of restoration if City chooses to perform the work. In connection with the foregoing, Tenant, at its sole cost and expense, shall restore the Premises (including their soil, groundwater and sediment) such that, on the Expiration Date, they will be returned to City:

- (a) Free of Term Contamination (as defined in Section 6.1.4) and in at least as good of a condition as the condition depicted in the Baseline Report. As between City and Tenant, Tenant shall bear sole responsibility for Term Contamination and any costs related thereto;

(b) Free of any encumbrances including but not limited to deed or land use restrictions as a result of any Term Release (as defined in Section 6.1.3) and/or any liens (UCC, federal or state tax or otherwise) on the Premises or on fixtures or equipment, or personal property left on the Premises;

(c) Free of all above- and below-ground works, structures, improvements and pipelines of any kind, (collectively referred to as "Structures"), placed on the Premises by Tenant. If the Premises have been improved by a prior tenant or by both City and a prior tenant, then such Structures which are left on the Premises at Tenant's request or for Tenant's benefit shall also be the responsibility of Tenant except as may be otherwise specified by this Agreement; and

(d) In a clean, level, graded and compacted condition with no excavations or holes resulting from Structures removed.

**11.2 Restoration Procedure.** Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 11.2.1 through 11.2.4 and comply with any other conditions reasonably imposed by Executive Director. Provided that Tenant discharges its obligations under this Section 11.2 expeditiously and in good faith, City shall reasonably endeavor to ensure that such discharge disturbs as little as reasonably possible Tenant's undertaking of the Permitted Uses. Executive Director may alter or delete any of the procedures set forth in Sections 11.2.1 through 11.2.4 at his or her sole and absolute discretion.

11.2.1 Not later than two (2) years before the Expiration Date and sooner if requested in writing by Executive Director, Tenant shall submit to City a written plan hereinafter referred to as the "Site Vacation Plan," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) on the Premises and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with applicable Environmental Law, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles Site Characterization Guidance Manual. Such work plan shall be developed with specific reference to determining the then-current environmental condition of the Premises as compared to the condition of the Premises as set forth in the Baseline Report (as defined in Section 6.2.3) and whether any instances of unremediated Term Contamination (as defined in Section 6.1.4) exist. Such work plan shall identify all consultants Tenant intends to use to generate the written characterization. City shall approve such consultants in its sole reasonable discretion;

(b) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work necessary to obtain, at Tenant's sole cost and expense, environmental and other entitlements (pursuant to CEQA, the National Environmental Protection Act ("NEPA") and any other applicable Environmental Laws) necessary to undertake the work contemplated by Section 11.2.1(a);

(c) A description of all liens on the Premises, Structures, and/or on fixtures and/or equipment or personal property intended to be left on the Premises following the Expiration Date;

(d) A description of all claims, causes of action, orders or enforcement actions then pending against or in connection with the Premises, the undertaking of the Permitted Uses, and/or this Agreement;

(e) All work including but not limited to demolition, grading and disposal, necessary to remove Structures. Tenant shall identify any contractors or consultants proposed to undertake such work, which shall be approved by City in its sole reasonable discretion; and

(f) A written schedule with milestones acceptable to City in its sole reasonable discretion under which entitlements pursuant to Section 11.2.1(b) will be obtained and operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.2 If a Term Release has occurred or is reasonably suspected, Tenant shall, following City's written approval of Tenant's Site Vacation Plan and not later than eighteen (18) months before the Expiration Date, or sooner if requested in writing by Executive Director, submit to City a written report hereinafter referred to as the "Preliminary Site Closure Report," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) All findings of the characterization required by Section 11.2.1 with substance and format that conforms with the Site Characterization Guidance Manual identified in Section 6.1.5;

(b) If the characterization required by Section 11.2.1 results in a finding that Term Contamination exists, a remediation action plan to City, the sufficiency of which is subject to City's reasonable approval, that addresses remediation of all such Term Contamination and that (i) conforms with Section 11.1; and (ii) includes a discussion of remedial action alternatives for restoration of the Premises and a timetable for each phase of restoration ("Expiration Remediation Action Plan"). The Expiration Remediation Action Plan shall conform with applicable Environmental Law, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual.

Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

(c) A report detailing the status of the removal of any liens identified in connection with Section 11.2.1;

(d) A report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1; and

(e) An updated schedule with milestones acceptable to City in its sole reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.3 Following City's written approval of Tenant's Preliminary Site Closure Report, and not later than one (1) year before the Expiration Date, or sooner if requested in writing by Executive Director, Tenant shall:

(a) Commence remediation of any Term Contamination in accordance with the Expiration Remediation Action Plan. Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

(b) Provide a report detailing the status of the removal of any liens identified in connection with Section 11.2.1;

(c) Provide a report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1; and

(d) Provide an updated schedule with milestones acceptable to City in its sole reasonable discretion under which entitlements pursuant to Section 11.2.1(b) will be obtained and operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.4 Not later than six (6) months before the Expiration Date, or sooner if requested in writing by Executive Director, Tenant shall have:

(a) Completed the remediation required by the Expiration Remediation Action Plan, and have submitted to City a report certified by the consultant(s) performing the remediation confirming same;

(b) Resolved and removed all liens identified in connection with Section 11.2.1 to the reasonable satisfaction of City;

(c) Resolved all claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1 to the reasonable satisfaction of City and any governmental agencies with jurisdiction over such claims, causes of action, orders or enforcement actions;

(d) Obtained, at its sole cost and expense, all necessary entitlements pursuant to Section 11.2.1(b); and

(e) Submitted an updated schedule with milestones acceptable to City in its sole reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.5 Subject to orders or directives issued by any regulatory agency with jurisdiction which orders or directives shall take precedence over this Section 11.2.5, the adequacy of Tenant's execution of the Expiration Remediation Action Plan shall be within the sole reasonable discretion of Executive Director. Tenant shall notify Executive Director in writing when it believes it has completed all work contemplated by the Expiration Remediation Action Plan.

**11.3 Restoration Indemnity.** In addition to and not as a substitute for any remedies provided by this Agreement or at law or equity, Tenant shall defend, indemnify and hold harmless City from any and all claims and/or causes of action brought against City and from all damages and costs which arise out of or are related to:

(a) Claims brought by holders of liens on the Premises, Structures, and/or on fixtures and/or equipment or property left on the Premises following the Expiration Date; and

(b) Claims, causes of action, orders or enforcement actions pending against or in connection with the Premises, the Permitted Uses and/or this Agreement.

Such indemnity is intended to and shall survive the expiration or earlier termination of this Agreement.

**11.4 Relocation Assistance.** Nothing contained in this Agreement shall create any right in Tenant or any sublessees of Tenant for relocation assistance or payment from City upon expiration or termination of this Agreement (whether by lapse of time or otherwise). Tenant acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of any state or federal law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover.

**11.5 Demolition of Improvements; Acceptance of Improvements.** If Tenant's improvements are not removed on or before the earlier to occur of the date of the termination of this Agreement or the Expiration Date, City shall have the right to remove and/or demolish the same at Tenant's cost. In that event, Tenant agrees to pay to City, upon demand, City's costs (as defined in Section 8.2) of any such removal or demolition. Notwithstanding the foregoing, City reserves the right to accept any works, buildings or other improvements upon the Premises, including a change in the grade thereof, constructed or altered pursuant to this Section 11 in lieu of restoration of the Premises to their condition prior to such construction or Alteration.

**Section 12. Indemnity and Insurance.**

**12.1 Indemnity.** Except as may arise from the sole negligence or willful misconduct of City, Tenant 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:

(a) 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 Tenant, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the Premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Agreement or otherwise;

(c) Any act, error, omission, willful misconduct or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subsections (a) through (d) above, existing or conducted upon or arising from the use or occupation by Tenant or its invitees on any other premises within the "Harbor District," as defined in City's Charter.

Tenant 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 City 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 12.1. The term "persons" as used in this Section 12.1 shall include, but not be limited to, officers and employees of Tenant.

Tenant 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, consultant fees and expert fees) which arise during or after the Agreement term as a result of Term Contamination for which Tenant is otherwise responsible for under the terms of this Agreement. This indemnification of City by Tenant 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 Term Contamination present in the soil or groundwater on or under the Premises.

The indemnity obligations in this Section shall survive the expiration or earlier termination of this Agreement 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.

**12.2 Insurance.** Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement the following insurance:

(a) **Commercial General Liability.** Commercial general liability insurance, including contractual liability, auto 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 Tenant's normal limits of liability, but not less than Five Million Dollars (\$5,000,000) for injury or death to one or more persons arising out of each accident or occurrence and Five Million Dollars (\$5,000,000) for property damage for each accident or occurrence. Tenant shall also procure and maintain at its expense and keep in force at all times during the term of this Agreement automobile insurance with limits of liability not less than Five Million Dollars (\$5,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. Said limits shall provide first dollar coverage except that the 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 Tenant. The retention or self-insurance provided shall provide that any other insurance maintained by the Department shall be excess of Tenant'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.

The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"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 City, Board, 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 Permit No. \_\_\_\_, and under any amendments, modifications, extensions or renewals of said permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District.

"The policy to which this endorsement is attached shall provide a ten (10) days' prior written notice of cancellation for nonpayment of premium, and a thirty (30) days' prior written notice of cancellation for any other reasons to the Harbor Department's Risk Manager;

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

"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; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

(b) Fire Legal Liability. In addition to and concurrently with the aforesaid insurance coverage, Tenant shall also secure 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), covering legal liability of Tenant 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 Board, with waiver of subrogation in favor of Tenant so long as permitted by Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to Tenant at any time during the term of this Agreement. Neither City nor Board should be named as additional insureds on this policy.

(c) All Risk Insurance. Tenant shall secure, and shall maintain at all times during the term of this Agreement and any holdover, fire and extended coverage insurance covering ninety percent (90%) of the replacement value of

the works, buildings and improvements erected or owned by Tenant on the Premises, with such provision in the policies issued to cover the same, or in riders attached thereto, as will provide for all losses over Two Hundred Fifty Thousand Dollars (\$250,000) to be payable to Board to be held in trust for reconstruction. In the event of loss or damage by fire to any of such buildings or improvements, Tenant shall undertake replacement or reconditioning of such items within ninety (90) days following any such loss. In the event Tenant shall undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be released by Board to Tenant as payments are required for said purpose. Upon the completion of such replacement or reconditioning to the satisfaction of Executive Director, any balance thereof remaining shall be paid to said Tenant forthwith. In the event Tenant fails to undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be retained by City.

(d) Workers' Compensation. Tenant shall secure the payment of compensation to employees injured while performing work or labor necessary for and incidental to performance under this Agreement in accordance with Section 3700 of the Labor Code of the State of California. Tenant shall file with the City one of the following: 1) a certificate of consent to self-insure issued by the Director of Industrial Relations, State of California; 2) a certificate of Workers' Compensation insurance issued by an admitted carrier; or 3) an exact copy or duplicate thereof of the policy certified by the Director or the insurer. Such documents shall be filed prior to delivery of Premises. Where Tenant has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act, Tenant shall furnish proof of such coverage to the City. It is suggested that Tenant consult an 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.

12.2.1 Such insurance procured by Tenant shall include the following features:

(a) Notice of Cancellation. Each insurance policy described above shall provide that it will not be cancelled or reduced in coverage until after the Risk Manager has been given a ten (10) days' written notice of cancellation for nonpayment of premium and a thirty (30) days' written notice of cancellation for any other reason.

(b) Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. Track4LA<sup>®</sup> is the City's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance

certificates directly to the City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format. The advantages of Track4LA<sup>®</sup> include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. Tenant's insurance broker or agent shall obtain access to Track4LA<sup>®</sup> at <http://track4la.lacity.org/> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

(c) **Renewal of Policies.** Prior to the expiration of each policy, Tenant shall show through submitting to Track4LA<sup>®</sup> that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA<sup>®</sup>. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant, may obtain such insurance for Tenant.

(d) **Modification of Coverage.** Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may request that Tenant 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 Tenant. Tenant shall not be obligated to comply with such request if, in its sole reasonable discretion, obtaining a policy with such adjusted limits is not economically feasible. In the event Tenant makes such a determination, it shall provide written notice to City within thirty (30) days following City's written request.

(e) **Accident Reports.** Tenant shall report in writing to Executive Director within fifteen (15) days after it, 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 Tenant's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Uses. 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 Tenant, its officers or managing agents.

### **Section 13. Tenant Transfers of Interest in Agreement.**

**13.1 Transfers Prohibited.** Unless processed and approved strictly in accordance with this Section 13, no transfer of this Agreement, 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

Tenant (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublease, transfer, gift, hypothecation or grant of total or partial control, or any encumbrance of this Agreement (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. For purposes of this Agreement, "Transfer" also shall include the involvement of Tenant 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 Agreement or Tenant's assets, which involvement results in a reduction of the net worth of Tenant (defined as the net worth of Tenant, 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 Agreement, or at the time of the most recent Transfer to which City has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 13, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee; or (2) a transfer by Tenant for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Tenant or of a general partner of a Tenant (except as provided in Section 13.2.1(e) below).

**13.2 Procedure to Obtain Consent to Transfer.** Notwithstanding the prohibition set forth in Section 13.1, 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."

13.2.1 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 guaranties 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 revenue 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;

(i) A description of the worth of the proposed Transferee including an audited financial statement;

(j) Any further information relevant to the proposed Transfer that City reasonably requests; and

(k) 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.

13.2.2 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 13 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 13, requesting City's consent. A material change for purposes of this Section 13 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 12 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 12.

(h) Transferee shall execute and deliver a written acceptance of assignment in a form acceptable to City in which Transferee expressly assumes all of Tenant's obligations under the Agreement.

**13.3 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 13.2.1 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.

**13.4 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.

**13.5 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.

**13.6 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.

**13.7 Indemnity in Favor of City.** In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Section 12 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.

**13.8 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.

**13.9 Transfers of Ownership.**

13.9.1 The transfer of more than twenty-five percent (25%) of the economic interest in Tenant or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant in one or more transactions, regardless of whether Tenant is a publicly or privately held entity, shall constitute a Transfer within the meaning of Section 13.1.

13.9.2 If Tenant is a partnership, any transfer or attempted transfer by any general partner of Tenant of more than twenty-five percent (25%) of its partnership interest in Tenant in one or more transactions shall be a prohibited Transfer within the meaning of Section 13.1. Notwithstanding the foregoing, if any transfer of a general partner's interest is due to the death of a general partner and results in the transfer to the immediate members of the general partner's family, who will be immediately and personally involved in the operation of the partnership, the City will not unreasonably withhold its consent to such transfer.

13.9.3 If a parent or other entity has guaranteed or otherwise secured any or all of Tenant's obligations under this Agreement and if the ownership, makeup or financial condition of such parent or other entity has, in the sole reasonable discretion of Executive Director, materially changed at any point during the term of this Agreement, the right is reserved for City to require amendments of such guarantee, the provision of new security, or a combination thereof reasonably required by Executive Director to maintain the level of security as provided by the original guarantee. Following the effective date, Tenant shall have a continuing obligation to notify City in writing of any and all events that do or might constitute a material change within the meaning of this Section 13.9.3.

13.9.4 Executive Director shall have the authority - but no obligation - to unilaterally modify the foregoing conditions based on the facts of a particular case.

**13.10 Assignments for Security Purposes.** Board will consider Tenant's request to assign this Agreement to secure financing of improvements on the Premises on a case-by-case basis. Consent to assignments for security purposes will not be granted unless Tenant and its lenders satisfy the following conditions, among others, which may be reasonably imposed by the Board:

- (a) Monies borrowed will be used exclusively to construct improvements on the Premises;
- (b) Monies borrowed must be in a fixed amount. New borrowings or refinancings require further Board approval;
- (c) The collateral covered by the security agreement securing Tenant's loan shall cover only Tenant's interest in improvements on the Premises, not the interests of City in improvements, and not any improvements or fixtures which, if removed, would leave the Premises untenable. In this Section 13.10, "untenable" means failing to comply with the standards described in Civil Code Section 1941.1 or its successor;
- (d) Nothing in the instrument which creates the security interest in the lender shall amend, modify, or otherwise affect the rights of City under this Agreement or any guaranty;
- (e) In the event the lender initiates any action to foreclose the interest of Tenant in this Agreement, the lender agrees to deliver to the Board in person or by registered mail a copy of any notice of default sent to Tenant and agrees, ten (10) calendar days in advance of any foreclosure sale, to give written notice to Board by registered mail. Such notices shall be addressed as follows:

Board of Harbor Commissioners  
c/o Director of Real Estate Division  
P.O. Box 151  
San Pedro, CA 90733-0151

Such notice shall specify which of the below alternative courses of action the lender will take with respect to the Agreement and any guaranty. Any and all of the below stated alternatives are contingent upon Board's approval in accordance with the conditions in subsection (f) below. Lender may:

- (1) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement; or
- (2) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement, and hire an operator, acceptable to Executive Director, who shall operate the Premises pursuant to the Agreement; or
- (3) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date, and thereafter reassign the Agreement with the consent of Board by order. Notwithstanding any provision of this Agreement to the contrary, in the event the lender initiates any action to foreclose the interest of any subsequent assignee of the Agreement, the lender agrees to make the notifications and elections required herein.

The foregoing election by the lender shall be without prejudice to any rights Board may have with respect to Tenant's default of this Agreement; provided, however, that Board shall mail to both Tenant and lender a copy of any written notice of default in the performance of the terms and conditions of the Agreement, by registered mail, return receipt requested, addressed as follows:

(Name and Address of Tenant and lender is to be specified by Tenant. If no lender is specified, notice to Tenant alone is agreed to be sufficient.)

The lender shall have the option to cure such default within the time specified in such notice, provided that if such default is noncurable in nature, City shall have the right to immediately reclaim the Premises and lender shall have no further interest.

(f) Any lender proposal to transfer its interest in this Agreement or interest therein or right or privilege thereunder requires Board's consent. Board may withhold its consent in its reasonable discretion if Board determines that the proposed transferee cannot meet all of the following conditions, and any other conditions which may be reasonably imposed by the Board:

(1) This Agreement shall be in full force and effect and no default shall exist or the lender shall agree in writing to cure all such defaults before the transfer.

(2) When requesting Board's consent to such a transfer, the lender shall demonstrate that: (a) the financial condition of the proposed transferee is as sound as that of Tenant at the time this Agreement was initially entered into or as at the time of the proposed transfer - whichever provides the better financial security to Board; (b) the proposed transferee has the requisite experience and reputation or has retained an operator with the requisite experience and reputation to operate the Premises; and (c) the proposed transfer will not unfavorably affect the revenues of the City, employment or the services available to the maritime community.

(3) Even if Board consents to such a proposed transfer, Board may first require that transferee and Board agree on a new compensation for the Premises transferred. If Board modifies the compensation, it shall take into account then Board policy for setting compensation and the prevailing market conditions.

(g) The form of all instruments and documents affecting the City's interests in the Premises shall be acceptable to Executive Director and City Attorney of City in their sole and absolute discretion.

(h) Board shall have the authority – but no obligation – to modify any of the foregoing conditions based on the facts of a particular case.

**13.11 Tenant Name Change.** Tenant shall promptly notify City in writing of any changes to its name set forth in the preamble of this Agreement.

**13.12 Written Certificate.** If requested in writing by Executive Director, Tenant shall, within ten (10) days of its receipt of such written request, certify under penalty of perjury under California law whether it has or has not undertaken a Transfer.

#### **Section 14. Records and Reports.**

**14.1 Operations.** Tenant 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. Tenant agrees that such books, records and accounts shall be made available to City at Tenant's offices in 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.

**14.2 ACTA.** Tenant shall provide to City, the Alameda Transportation Corridor Authority ("ACTA"), or their agents, any information reasonably required to compile accurate statistical information related to the Alameda Corridor, and to enable ACTA to generate timely and accurate invoices for Alameda Corridor use fees and container charges payable by users of the Alameda Corridor. Tenant shall use its best efforts to provide such non-confidential and non-privileged information in the format requested.

#### **Section 15. Miscellaneous.**

**15.1 Titles and Captions.** The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

**15.2 Construction of Agreement.** This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

**15.3 Entire Agreement; Amendments.** This Agreement and all exhibits referred to in this Agreement constitute the final complete and exclusive statement of the terms of the agreement between City and Tenant pertaining to Tenant's use and occupancy of the Premises and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

**15.4 Modification in Writing.** This Agreement may be modified only by written Agreement of all parties. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or elsewhere.

**15.5 Exhibits.** All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. References to sections are to sections of this Agreement unless stated otherwise.

**15.6 Waivers.** A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing. The subsequent acceptance of rent by Board shall not be deemed to be a waiver of any other breach by Tenant of any term, covenant or condition of this Agreement, other than the failure of Tenant to timely make the particular rent payment so accepted, regardless of Board's knowledge of such other breach. No delay, failure or omission of either party to execute any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee then or thereafter accrued, shall impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by either party shall be required to restore or revive the time is of the essence provision hereof after waiver by the other party or default in one or more instances. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to City by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, in that the exercise of one right, power, option or remedy by City shall not impair its rights to any other right, power, option or remedy.

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

**15.8 Time is of the Essence.** Time shall be of the essence as to all dates and times of performance, and obligations set forth herein, whether or not a specific date is contained herein. If performance is required by the terms hereof on a Saturday, Sunday or legal holiday in California, the performance shall be made on the next business day.

**15.9 Notices.** The parties shall send all notices or other communication necessary under this Agreement in writing by personal service, or express mail, Federal Express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

If to Tenant:

Gary Jones, Vice President  
WWL Vehicle Services America, Inc.  
288 Broadway  
Woodcliff, NJ 07677  
(201) 307-9556

If to City:

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90731  
Attn: Executive Director

with copies to:

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

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other parties.

**15.10 Statements of Tenant as Applicant.** This Agreement may be granted pursuant to an application filed by Tenant with Board. If the application or any of the attachments thereto contain any material misstatements of fact, Board may cancel this Agreement. Upon any such cancellation of the Agreement granted hereunder, Tenant shall quit and surrender the Premises as provided in Section 9.

**15.11 Governing Law and Venue.** This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by 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 Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules. If either party files or attempts to litigate an action in violation of this Section 15.11, the other party shall be entitled to recover reasonable costs and attorneys' fees incurred to enforce this Section 15.11.

**15.12 Affirmative Action.** Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All assignments, subleases and transfers of interest in this Agreement under or pursuant to this Agreement shall contain this provision. The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached Exhibit "H" are incorporated herein and made a part hereof.

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

**15.14 Possessory Interest.** Tenant is aware that the granting of this Agreement to Tenant may create a possessory property interest in Tenant and that Tenant may be subject to payment of a possessory property tax if such an interest is created.

**15.15 Severability.** Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the Applicable Law or public policy and to effect the original intent of the parties as closely as possible.

**15.16 Waiver of Claims.** Tenant hereby waives any claim against City and Board and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

**15.17 Attorneys' Fees.** In any legal action or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to "reasonable attorneys' fees" and any other costs and expenses, including but not limited to expert fees, incurred in that proceeding in addition to any other relief to which it is entitled. The "reasonable attorneys' fees" awarded under this Section 15.17 shall be determined by calculating the hours reasonably expended by each counsel for the prevailing party multiplied by the prevailing market hourly rate in Southern California for attorneys of comparable skill and experience.

**15.18 Conflict of Interest.** The parties to this Agreement 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 City's 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 Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

**15.19 Extent of Water Frontage.** In case this Agreement or any improvements made hereunder or this Agreement or any part thereof shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation so that such person, firm or corporation shall then own, hold or control more than the length of water frontage permitted or authorized under Section 654(a) of the Charter of City or if Tenant shall hold or control such water frontage, then this

Agreement and all rights hereunder shall thereupon and thereby be absolutely terminated, and any such attempted or purported assignment, transfer or sublease, or giving or granting of control to any person, firm or corporation, which will then own, hold or control more than such permitted or authorized length of water frontage, shall be void and ineffectual for any purpose whatsoever.

**15.20 Business Tax Registration Certification.** City's Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09. This section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department. See Exhibit "I."

**15.21 Service Contractor Worker Retention Policy and Living Wage Policy Requirements.** 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 City's Harbor Department. Further, Charter Section 378 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. Tenant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

**15.22 Wage and Earnings Assignment Orders/Notices of Assignments.** Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees. Tenant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders/Notices of Assignments applicable to them personally. Tenant shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Section 5230 et seq. Tenant shall maintain such compliance throughout the term of this Agreement.

**15.23 Equal Benefits Policy.** 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 City's Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any agreement with Tenant and pursue any and all other legal remedies that may be available.

**15.24 State Tidelands Grants.** This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times 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 provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Tenant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

**15.25 Prior Permits.** This Agreement shall supersede the Agreement granted by Preferential Berth Assignment 77-34. From and after the Effective Date of this Agreement, said Agreement shall have no further force or effect.

**15.26 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of City and shall be binding upon and inure to the benefit of the successors and permitted assigns and sublessees of Tenant.

**15.27 Disclosure Laws.** Tenant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include but are not limited to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws"). Tenant further acknowledges City's obligation and intent to comply with such Disclosure Laws in all respects. Notwithstanding the foregoing, in the event that City receives a request for disclosure of records in connection with this Section 15.27, City will immediately notify Tenant in writing, enclosing a copy of such request, at which point Tenant may take whatever steps deemed appropriate, including but not limited to seeking a protective or other order excusing disclosure from a court of competent jurisdiction. In the absence of such an order from a court of competent jurisdiction excusing City from its disclosure obligations, City shall undertake whatever action is necessary to comply with the requirements imposed by the applicable Disclosure Law(s). In the event that any action is filed by Tenant and/or by any requester of information where Tenant elects to challenge any disclosure, and City is named as a party to that action, Tenant shall defend and hold City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliated entities, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing harmless from any and all defense costs and judgments or settlements in any such action as well as all other losses and expenses arising out of or related to such action.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

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

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


By \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Board Secretary

WWL Vehicle Services America, Inc.

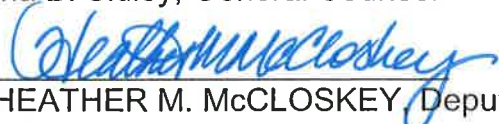
Dated: 10/16/13

By   
John Felitto, President & CEO  
(Print/type Name and Title)

Attest:   
\_\_\_\_\_  
(Print/type Name and Title)  
Dan Conaton  
Senior Vice President, General Counsel (Secretary)

APPROVED AS TO FORM AND LEGALITY

10/23, 2013  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By   
HEATHER M. McCLOSKEY, Deputy





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

IT IS HEREBY ORDERED by the Board of Harbor Commissioners that PERMIT NO. 900 granted by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to WWL VEHICLE SERVICES AMERICAS, INC., is hereby approved and the Executive Director and the Secretary of the Board are hereby authorized and directed to execute and attest to the same on behalf of the City of Los Angeles upon this Order being approved by the City Council as described below.

The Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners of the City of Los Angeles and shall cause a copy of the same to be presented to the City Council as provided in Section 606 of the Charter of the City of Los Angeles. If the Council shall approve this Order within 30 days after such Order shall have been presented to it, or if the Council shall fail to disapprove this Order within said 30 days, the Order shall be deemed approved and shall become effective upon such approval without publication. The Permit approved by this Order shall become effective immediately upon execution by the Executive Director and Board Secretary after such Council approval of the Order.

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

JULIE WICHMANN HUERTA  
Board Secretary

APPROVED AS TO FORM

10/17, 2013  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By   
HEATHER M. McCLOSKEY, Deputy

TRANSMITTAL 3