

AMERICAN ASSOCIATION  
OF PORT AUTHORITIES

PORT ADMINISTRATION AND LEGAL ISSUES  
SEMINAR

BALTIMORE, MARYLAND  
APRIL 15 – 17, 2009

REAL ESTATE PRESENTATION  
SAMPLE LEASE TERMS

HEATHER McCLOSKEY  
DEPUTY CITY ATTORNEY  
PORT OF LOS ANGELES

## **1. DESCRIPTION OF THE PREMISES**

### Premises

City hereby nonexclusively assigns and Tenant accepts the premises described below, subject to the terms and conditions provided herein and to the rates, terms and conditions of Port of Los Angeles Tariff No. 4, as it now exists or may be amended or superseded ("Tariff"). Tenant acknowledges it has received, read and understands the rates, terms and conditions of the Tariff. Except as modified by this Agreement, Tenant agrees to be contractually bound by the Tariff rates, terms, and conditions as if these terms were set forth in full herein. In the event of any conflict between the provisions of this Agreement and the provisions of the Tariff as it presently exists or as it may subsequently be changed, this Agreement shall at all times prevail. Tenant is responsible for maintaining a complete and current Tariff and assumes responsibility for doing so.

### Description of the Premises

The premises subject to this Agreement comprise Areas Nos. 1 and 2, including Berths \_\_\_\_ and \_\_\_\_ (approximately 2,800 to 3,200 lineal feet  $\pm$  50 feet) and approximately 110 acres of wharf and backlands ( $\pm$  4 acres). Those areas are delineated and more particularly described on Drawing No. 1-2339. This drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department of City ("Harbor Engineer"). A copy of said drawing is attached as Exhibit "A" and incorporated by reference into this Agreement. Upon completion of the City Improvements in accordance with the provisions of Section 6 of this Agreement, a revised drawing shall be prepared by the Harbor Engineer and marked Exhibit "A-1." Exhibit "A-1" shall be attached to this Agreement and incorporated herein by reference and shall thereupon be substituted for Exhibit "A." Tenant shall have the "preferential" right to use Berths \_\_\_\_ and \_\_\_\_.

The term "premises" as used in this Agreement, shall include all structures owned by or under the control of Board within said parcels which are made available for Tenant's use whether on or below the surface and such structures as City may construct for Tenant. No other structure shall be considered to be a part of the premises except to the extent that Tenant's maintenance, restoration, and indemnity and insurance obligations shall extend in addition to all buildings or improvements it owns or subject to its control on the premises.

## **2. PERMITTED USES**

(a) Permitted Uses. Tenant shall use the premises for the docking and mooring of vessels owned, operated, or chartered in whole or in part by Tenant or vessels of Tenant's invitees and for the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon such premises and from and upon other vessels, as well as office, administrative and maintenance activities necessary thereto and for purposes incidental to and related to the operation of a container terminal. Tenant shall not use or permit the premises or any part thereof to be used for any other purpose without the prior written approval of Board, and subject to such restrictions, limitations and conditions as may be imposed by Board.

(b) Solicitation and Service of Customers. Tenant may solicit and serve customers at the premises; provided, insofar as the same restrictions are applicable to other Port of Los Angeles tenants, Tenant agrees not to solicit and serve any customer which is a tenant of the City at other premises in the Port of Los Angeles or which is regularly served by a tenant of the Port of Los Angeles without the prior written approval of Executive Director; and provided

further, that Tenant may solicit and serve any space charterer or rationalization partner of Tenant. If Tenant requests such approval, it shall provide City sufficient information so City may determine whether new business will be generated in the Port or simply relocated within the Port.

### **3. INSPECTION OF PREMISES**

Inspection. Tenant will inspect the premises on or before the Occupancy Date as defined in Section 6(c), below, in contemplation of occupying them for the uses permitted and will, before the Occupancy Date, agree that:

(1) Suitability. The premises, including any improvements covered by this Agreement, are suitable for Tenant's intended uses. No officer or employee of City has made any representation or warranty with respect to the premises, including improvements and Tenant has not relied on any such warranty or representation unless the nature and extent of such representation or warranty is described in writing and included in or attached to this Agreement.

### **4. MAINTENANCE AND REPAIRS**

(a) Maintenance. The maintenance obligations of the parties are as follows:

(1) Maintenance Performed by City at City's Expense (Except as Noted). Except as provided in subsections (a)(3), (a)(4), (a)(7) and (a)(8) of this Section 8, City will maintain at its expense the roofs and exteriors of all buildings owned by City and the structural integrity of wharf structures as defined below and buildings owned by City. The "wharf structure" for purposes of this subsection means the beams, girders, subsurface support slabs, bulkheads and prestressed concrete or wood piling, joists, pile caps and timber decking (except as noted below), and any and all mooring dolphins. The wharf structure does not include the paving, the surface condition of timber decking or the fendering system. City will perform dredging as necessary to maintain a depth of -53 feet MLLW at the berths, to a width of 125 feet from pierhead lines. City will maintain and repair at its expense all fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, and other fire protective or extinguishing systems or appliances (portable fire extinguishers and hoses excluded) which have been or may be installed in buildings or structures City owns on the premises. City shall be responsible, at its expense, for the repair of any "pavement failure," i.e., pavement deterioration resulting from defective design or construction which impacts the safety and efficiency of Tenant's operations within the premises. Pavement repairs, if any, shall be coordinated with Tenant to minimize impacts to Tenant's operations. City shall also perform at its expense all electrical substation and switchgear preventive maintenance.

(2) Maintenance Performed by City at Tenant's Expense. Subject to the provisions of subsections (a)(3), (a)(4), (a)(7) and (a)(8), City shall maintain and repair the fender system along the wharves, (in accordance with City's wharf damage procedures, a copy of which will be provided to Tenant upon its request), refrigerated receptacle outlets, backflow devices and potable water systems and heating and air conditioning systems, so long as City forces are available. Unless otherwise agreed, such maintenance and repair shall be at Tenant's expense. If, however, Tenant fails to pay City in accordance with City's wharf damage procedure (which contains depreciation

criteria favorable to Tenant), then City reserves the right to collect the actual cost of repair based on actual depreciation factors as established by City.

(3) Maintenance Performed by Tenant at Its Expense. Tenant shall be responsible for performing and paying for all maintenance and repairs not expressly covered above. Tenant shall be responsible at its expense for inspecting and assuring that all necessary portable fire extinguishers are present on the premises and maintained in an operable condition. Notwithstanding subsection (1) above, all modifications or repairs to the electrical, plumbing or mechanical systems resulting from "call outs" (Tenant-requested repairs requested on weekend, holidays or other than 7:45-4:15 Monday-Friday or such other times as City adopts as its maintenance force work hours) are at Tenant's expense. Tenant shall also be responsible at its expense for inspecting the premises and keeping the premises, [including, but not limited to, the surface of timber decking, all paving, landscaping, irrigation systems, fencing, signage, and striping (if any) and relamping] and all works, structures and improvements thereof, whether a part of the premises or placed by Tenant in a safe, clean, sanitary and sightly condition. All maintenance performed by Tenant shall assure the premises are maintained in a good operating condition and in conformance with all applicable federal, state, regional, municipal and other laws and regulations. The appearance, safety and operational capability of the premises shall be maintained to the satisfaction of the Executive Director. Tenant shall exercise reasonable care to immediately discover and guard against any defects in all surfaces of timber decking, paving, buildings, structures and improvements on the premises without request from City. Tenant shall also completely maintain at its expense all buildings, structures, improvements, timber decking surfaces and paving it erects, owns, or installs. All modifications and repairs which Tenant makes to City-owned or Tenant-owned buildings, structures, improvements, timber decking and paving require a Harbor Department Engineering permit. Sample permits are available upon request from the Harbor Engineer. Tenant agrees to strictly comply with all the terms and conditions of the Harbor Engineer's permit. Tenant shall maintain in its offices at the premises at all times the Harbor Engineer's permit allowing the work performed and proof that the work has been performed in accordance with all terms and conditions of the permit. Modifications and repairs shall be made using materials of a kind and quality comparable to the items being replaced (in-kind replacement shall be utilized if material still manufactured). Tenant is obligated at its expense to take both such preventive and remedial maintenance actions as are necessary to assure that premises are at all times safe and suitable for use regardless of whether Tenant is itself actively using all of the premises. Tenant shall provide notice to the Harbor Engineer five (5) calendar days before any paving work is performed; provided, however, Tenant shall immediately repair any condition creating a risk of harm to any user of the premises. All materials used and quality of workmanship shall be satisfactory to the Harbor Engineer.

(4) Tenant's Responsibility for Damage to City-Owned Structures. Notwithstanding the foregoing, if damage to the wharf structure or any other building, structure, improvement or surface area is caused by the acts or failure to act of Tenant, its officers, agents, employees or its invitees, (including, but not limited to, customers of Tenant and contractors retained by Tenant to perform work on the premises, hereafter collectively "invitees"), Tenant shall be responsible for all costs, direct or indirect, associated with repairing the damage and the City shall have the option of requiring Tenant to make the repairs or itself making the repairs. If City makes the repairs, Tenant agrees to reimburse City for the City's cost of repair. All damage shall be presumed to be the responsibility of Tenant and Tenant agrees to be responsible for such damage

unless Tenant can demonstrate to the reasonable satisfaction of City that someone other than its officers, agents, employees, or invitees caused the damage. Tenant agrees to reimburse City for the cost of repair to City's wharf for any damage to the wharf resulting from a collision between a vessel and the wharf while docking or undocking unless Tenant demonstrates that such damage was caused by the sole active negligence of City or demonstrates that such damage was caused by an invitee of some other tenant to which the premises are also assigned. The sufficiency of proof presented by Tenant to City shall be as reasonably determined by City.

(5) City's Option to Perform Work at Tenant's Expense. If Tenant fails to repair, maintain and keep the premises and improvements as above required, Executive Director may give thirty (30) days' written notice to Tenant to correct such default, except that no notice shall be required where, in the opinion of Executive Director, the failure creates a hazard to persons or property. If Tenant fails to cure such default within the time specified in such notice, or if Executive Director determines that a hazard to persons or property exists due to such failure, Executive Director may, but is not required to, enter upon the premises and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and administrative overhead, to be charged against Tenant. Such charges shall be due and payable with the next rent payment. During all such times, the duty shall be on Tenant to assure the premises are safe and Tenant shall erect barricades and warning signs to assure workers and the public are protected from any unsafe condition.

(6) Inspection of Premises and Tenant Repairs. Tenant shall be responsible for inspecting the premises (including all surfaces of timber decking, paving, structures, buildings and improvements) and at all times maintaining the premises in a safe condition. Executive Director and/or his representatives shall have the right to enter upon the premises and improvements constructed by Tenant at all reasonable times for the purpose of determining compliance with the terms and conditions of this Agreement or for any other purpose incidental to the rights of City. This right of inspection imposes no obligation upon City to make inspections nor liability for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damages to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. City assumes no responsibility for any shortages of cargo handled by Tenant. If City requests drawings and/or specifications showing the location and nature of repairs to be made or previously made by Tenant (including by its invitees), Tenant agrees to provide to City the material requested in writing within ten (10) calendar days of request by City.

(7) City's Access to Maintain and Repair Premises. If City deems it necessary to maintain or repair the premises, Tenant shall cooperate fully with City to assure that the work can be performed timely and during City's normal working hours. If City is required to perform any work outside its normal working hours, even work which would otherwise be at City's expense, the entire cost of such work shall be at Tenant's expense, unless the work is deemed by the City to be an emergency, in which case City will bear all costs. If such work would ordinarily be at Tenant's cost, the entire cost of such work shall be at Tenant's expense.

(8) Maintenance/Repair Obligations Dependent on Indemnity/Insurance Provisions. City's agreement to perform certain maintenance and repairs and to pay for certain repairs is expressly conditioned on the indemnity and insurance provisions of this Agreement remaining in force and effect. If Tenant fails to comply with the indemnity and

insurance provisions, then Tenant shall be obligated to perform and pay for all maintenance and repairs to the premises without exception at its own expense. Tenant shall perform such maintenance and repairs only after it has secured the Harbor Engineer's general permit. Such work shall be deemed completed only when all terms of the permit have been satisfied. If City inspects any work performed by Tenant and finds it unsatisfactory, Tenant shall be obligated to correct the work to City's satisfaction at Tenant's expense.

(9) Definition of City's Actual Costs. Whenever this Section requires Tenant to reimburse City for the City's cost of maintenance, the City's cost of maintenance is agreed to include all actual costs which City incurs whether with its own forces or with an independent contractor. These costs include salary and all other costs City incurs from its employees ("salary burden"), all material and equipment costs including an administrative equipment handling charge, and also a general administrative overhead cost consistent with City's billing practice to its other tenants.

(10) Exhibit Listing More Common Maintenance Items. Attached as Exhibit "G," is a detailed description of items which is intended to describe the more common maintenance work which may be necessary at the premises. Not all items listed will be present at all premises within the Port. Costs and responsibilities shall be apportioned as set forth in Exhibit "G" except as may otherwise be required by the provisions above.

(11) Maintenance by City. All maintenance performed by City shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations.

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#### EXHIBIT "G"

##### MARINE TERMINAL MAINTENANCE PROVISIONS FOR ALL LEASE AGREEMENTS

- I. Structural Maintenance & Repair Performed by City at City's Expense\* Within Lease Area
  - 1. Roofs
  - 2. Exteriors of structures, including exterior painting
  - 3. Wharf structure (as defined)
  - 4. Wharf bulkheads
  - 5. Rock slopes
  - 6. Maintenance dredging
  - 7. Replacement of deteriorated electrical conduit and pipeline system
  - 8. High and low voltage systems, including switchgear and crane power trench
  - 9. Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems
  - 10. Pavement failure (as defined in agreement)
- II. Maintenance & Repair Performed by City at Tenant's Expense Within Lease Area
  - 1. Fender system repair (wharf damage procedure)
  - 2. Refrigerated receptacle outlet (reefer) maintenance
  - 3. Backflow devices and potable water systems
  - 4. HVAC servicing and repair
- III. Operational Maintenance & Repair to be Performed by the Tenant. Port Will Perform if Forces Available by Accommodation Work Order Within Leased Area at Tenant's Expense. Tenant However Remains Responsible for Sufficiency of All Work

This portion of the Exhibit describes the maintenance and repair of items commonly found on terminal premises granted to Tenants. Not all items listed below may be present on all terminal premises. This list is only illustrative of the items which Tenant must maintain.

1. All landscaping, including irrigation systems
2. Daily janitorial service\*\*\*
3. Relamping of terminal wharf and backland light standards\*\*
4. Interior painting
5. Elevator and escalator maintenance\*\*
6. Clarifier maintenance & servicing\*\*\*
7. All toxic waste removal\*\*\*
8. Storm drain inlet maintenance and cleaning
9. Cleaning clogged drains, including toilet/urinal stoppages
10. Pneumatic tube system maintenance\*\*
11. Emergency generator unit maintenance\*\*
12. Mooring capstans
13. Mechanical ramps and loading dock boards
14. Passenger gantries\*\*, baggage systems\*\*, conveyor systems\*\*
15. Replacement of all light bulbs
16. Traffic and backland area striping (requires permit & approval by Harbor Engineer)
17. Weigh scales\*\*
18. Wheel stop maintenance
19. Fence and gate maintenance
20. Rolling and sliding door maintenance
21. Window, door glass replacement
22. Carpet, tile, and vinyl floor replacements
23. All mechanical, electrical, hydraulic and air equipment and devices used by Tenant to maintain Tenant-owned machinery and equipment
24. Gate house equipment, including gate arms and mechanical/electrical equipment therein
25. Recharging and servicing of fire extinguishers
26. Surface paving, wharf and backland (exclusive of pavement failures, as defined in agreement)
27. All underground and above ground tanks, pipelines and appurtenances unless the Agreement specifically otherwise provides.

\* To be maintained at Tenant's expense if damaged by Tenant.

\*\* To be maintained to Port's standards and subject to periodic audits and inspection by the Port of Los Angeles

\*\*\* At no time does Port provide or perform

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## 5. DEFAULT AND TERMINATION

### (a) Default and Right to Terminate.

(1) Upon the neglect, failure or refusal by Tenant to comply with any of the terms or conditions of this Agreement constituting a substantial breach of contract, after thirty (30) days' written notice and demand by Executive Director to comply with any such term or condition, Board may, at its option, if such default is continuing or, in the event such default cannot be cured within such 30-day period, the cure has not been initiated, declare this Agreement terminated. Thereafter, Board may recover possession of the premises as provided by law. However, if there is any material default in the payment by Tenant of the compensation or other consideration required by this Agreement, except in instances where a bona fide dispute exists between the parties as provided in Section 3(m) of this Agreement, Executive Director may give to Tenant a thirty (30) calendar day notice to pay all sums then due, owing and unpaid. If such payment is not made within such thirty (30) calendar day period, at the election of City, stated in such notice, this Agreement and Tenant's rights hereunder shall terminate and City has the rights above set forth.

(2) Upon any termination of this Agreement, Tenant shall immediately surrender all rights in and to the premises and all improvements. Tenant expressly agrees to indemnify City for any loss City may suffer if the Agreement is terminated and Tenant fails to vacate the premises. Upon any such termination of this Agreement, any and all buildings, structures and improvements of any character whatsoever, erected, installed or made by Tenant shall immediately ipso facto either become the property of City free and clear of any claim of any kind or nature of Tenant or its successors in interest, and without compensation to Tenant or its successors, or become removable by Board at the sole expense of Tenant, at the option of Board.

(3) If this Agreement is terminated as set forth above, Board may enforce all of its rights and remedies under this Agreement. The damages that City may recover include the worth at the time of the award of the amount by which the unpaid compensation for the balance of the term of this Agreement exceeds the amount of such compensation loss for the same period Tenant proves could have been reasonably avoided by City.

## **6. RESTORATION OF PREMISES**

(1) Restoration. Unless otherwise agreed by the parties, on or before expiration of the term of this Agreement, or any sooner termination thereof other than pursuant to subsections (a) and (b) of Section 5 of this Agreement, Tenant shall remove, at its sole cost and expense, all works, structures, improvements and pipelines of any kind including paving (collectively referred to as "structures") placed on the premises by Tenant. Tenant shall leave the premises, including all structures constructed, owned or controlled by Tenant, free from hazardous substance and hazardous waste contamination, including hazardous liquid bulk products and petroleum products (hereinafter collectively referred to in this Agreement as "hazardous material") as those terms are defined under any federal, state, local law or ordinance (hereinafter sometimes collectively referred to in this Agreement as "Law") that arise from Tenant's use of or operations on the premises, and leave the surface of the ground in a clean, level, graded and compacted condition with no excavations or holes resulting from structures removed. Upon the expiration of the term of this Agreement or any sooner termination thereof, other than by forfeiture pursuant to subsections (a) and (b) of Section 5 of this Agreement, Tenant shall quit and surrender possession of the premises to Board leaving all City 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 or any prior Agreement, lease or permit, 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 effective premises. If the condition of the premises is upgraded during occupancy of the premises, such as by maintenance dredging, Tenant agrees to be responsible for restoring the premises to the upgraded condition. Tenant agrees to remove all debris and sunken hulks that arise from Tenant's use of or operations on the premises from channels, slips and water areas within or fronting upon premises. 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 subsection (a) or (b) of Section 5, 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. Tenant shall have no responsibility for the removal and clean-up of oil or other hydrocarbon substances on the premises arising from any oil drilling operations conducted by City pursuant to Section 1(e)(4) of this Agreement.

## **7. INDEMNITY AND INSURANCE PROVISIONS**

(a) Indemnity. Except as may arise from the sole negligence or willful misconduct of City, Tenant shall at all times relieve, indemnify, protect, defend 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 expenses incurred in defending against legal actions, 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:

(1) 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;

(2) 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;

(3) Any act, omission or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, except to the extent that Tenant proves that any negligence of City, its officers, agents, invitees, secondary assignees or employees contributed thereto, in which case Tenant shall provide a legal defense to City and indemnify City to the extent set forth below in this part;

(4) 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

(5) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (1), (2), (3) and (4) of this subsection (a), 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 the Charter of City.

Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and the Harbor Department, including, but not limited to: damage to or loss of City property, to the extent not insured by City's property insurance coverage; injury to city employees; and from 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 subdivisions (1), (2), (3) (4) and (5) of this subsection (a). The term "persons" as used in this subsection (a) 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 which arise during or after the Agreement term as a result of contamination of the premises by hazardous materials for which Tenant is responsible pursuant to Section 8 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 hazardous material present in the soil or groundwater on or under the premises for which Tenant is responsible under Section 8 of this Agreement. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

In the event that contributory negligence on the part of City is alleged in any legal action or proceeding which may be brought against City for death of or injury to person(s) or for damage to property of others arising from and alleged to be caused directly or indirectly by Tenant's operations, uses, acts and activities pursuant to this Agreement, Tenant shall, at its option, either (i) provide to City, at Tenant's expense, an independent legal defense conducted by counsel of City's choice and bear City's costs of suit, or (ii) defend and indemnify City against any liability for damages and bear all costs of suit determined in the course of such legal action or proceeding. If Tenant elects to provide an independent legal defense to City as described herein, Tenant shall have no obligation to indemnify or to reimburse City for damages imposed upon City by final judgment or conclusive determination of City's liability for the negligent or willful acts or omissions of City's officers, employees or agents, including final determination of liability upon stipulation by City or by final settlement. If Tenant elects to defend itself and City against such legal action or proceeding by joint representation by counsel, Tenant shall pay any and all damages which may be imposed upon City as a result of such action or proceeding. The term "persons" as used in this subsection (a) shall include, but not be limited to, officers and employees of Tenant and City.

Tenant shall have no obligation to indemnify, defend and otherwise hold City harmless under the provisions of Section 9(a) for damage to property or for death or injury to persons which is caused by the active negligence, sole negligence or willful misconduct of City arising in connection with construction of the City Improvements in accordance with Section 6 of the Agreement. This provision shall remain in effect after completion of construction by City.

(b) Liability for Damages to Premises Caused by Third Parties. City's grant of the premises to Tenant imposes the obligation on Tenant to maintain the necessary security on the premises to assure they are not used by anyone not having the permission of Tenant or City. Tenant is liable for all damages to the premises caused by its invitees. It is also responsible for damage to the premises caused by non-invitee third parties, unless Tenant, within a reasonable period after said damages occur, secures and furnishes the City with information and evidence reasonably satisfactory to the City reasonably fixing liability on some responsible person other than Tenant, its invitees, licensees, sublessees or contractors and subcontractors. Damages to the facility are conclusively presumed to be caused by the Tenant unless Tenant demonstrates to the reasonable satisfaction of the City that said damages were caused by a third party unconnected to Tenant's operations. If Tenant demonstrates to the satisfaction of the City that said damages were caused by such other person, Tenant shall not be responsible for the cost of repairing the damage but shall be responsible for assuring the premises are kept in a safe condition until repaired.

Tenant shall have no obligation to indemnify, defend and otherwise hold City harmless under the provisions of Section 9(a) for damage to property or for death or injury to persons which is caused directly or indirectly by any act, omission or negligence in the operations or uses of the premises by any third-party user or assignee of City, pursuant to Section 1(b) of this Agreement.

(c) 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:

(1) Public Liability and Property Damage. Broad form comprehensive public liability and property damage insurance (including automobile and contractual liability assumed coverages) written by an insurance company authorized to do business in the State of 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) combined single limit for injury or death or property damage arising out of each accident or occurrence. If the submitted policy provides for an aggregate limit, such limit shall not be less than Five Million Dollars (\$5,000,000) except as otherwise may be acceptable to Executive Director. Said limits shall be without deduction, provided that Executive Director may permit a deductible amount in those cases where, in his judgment, such a deductible is justified. The insurance provided shall contain a severability of interest clause. In all cases, regardless of any deductible, said insurance shall contain a defense of suits provision. If Tenant operates watercraft or incurs other marine liability exposure, liability coverage for such watercraft and marine exposure must be provided as above. All submitted policies, unless otherwise provided, shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or in any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Harbor Department, the City's and Department's officers, agents and employees, are additional insureds hereunder, and that coverage is provided for risks arising out of all operations, uses, occupations, acts and activities of the insured under Permit No. \_\_\_\_\_ for which Tenant is responsible to indemnify the City of Los Angeles, its Harbor Department, the City's and Department's boards, officers, agents and employees pursuant to Section 9(a) of this Agreement, and under any amendments, modifications, extensions or renewals of said Agreement regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured or a combination of the insured and the additional insured;

"(ii) The policy to which this endorsement is attached shall not be canceled, reduced in coverage or nonrenewed until after the Board and the City Attorney of City have each been given thirty (30) days' prior written notice by certified mail addressed to P.O. Box 151, San Pedro, California 90733-0151;

"(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage (or excess of primary coverage when an excess policy is also submitted) and any other insurance carried by City is excess of this insurance and shall not contribute to it;

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

"(v) Notice of occurrences or claims under the policy shall be made to [Tenant's insurance carrier is to provide this information]."

- (2) Fire Legal Liability. ....
- (3) Fire and Extended Coverage Insurance. ....
- (4) Notice of Cancellation. ....
- (5) Duplicate Insurance Policies. ....
- (6) Renewal of Policies. ....
- (7) Modification of Coverage. ....

(d) 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 Ten Thousand Dollars (\$10,000) 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. 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.

(e) Compensation Terms Dependent on Indemnity Provisions. Tenant is aware that the City's willingness to agree to the compensation provision of this Agreement is dependent upon Tenant's complying with each of the indemnity obligations above and on the enforceability of such provisions. Therefore, it is agreed that if any of these provisions shall be determined to be unenforceable, City may require Tenant to pay an adjusted minimum annual guarantee. If City chooses to adjust the minimum annual guarantee due from Tenant, the revised minimum annual guarantee shall be increased by five percent (5%) effective thirty (30) days after the date the provisions were rendered unenforceable. Notwithstanding the foregoing, if Tenant continues to provide City insurance which provides the same protection to City that City would have had prior to any provisions being rendered unenforceable, then City's right to increase compensation shall be delayed so long as Tenant provides said insurance.