

### **TIDELAND USE AND OCCUPANCY PERMIT**

THIS PERMIT, by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," to CITY OF CORONADO, a municipal corporation, hereinafter called "Tenant," is set forth as follows:

District for the considerations hereinafter set forth, hereby grants to Tenant upon the terms and conditions and for the purposes and uses hereinafter set forth, the right to use and occupy a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California, entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows and are referenced in this Permit as "Premises":

Approximately 23,661 square feet of Tideland area located on the north side of the San Diego-Coronado Bridge, east of Glorietta Boulevard, in the City of Coronado, California, more particularly delineated as Parcels Nos. 1 and 2 on District Drawing No. 057-012 dated February 13, 2017, attached hereto as Exhibit "A" and by this reference made a part hereof, hereinafter "Premises"

This Permit is granted upon the following terms and conditions:

1. **TERM:** The term of this Permit shall be for five (5) years, commencing on the 1<sup>st</sup> day of March 20~~22~~<sup>17</sup>, and ending on the 28<sup>th</sup> day of February 20~~27~~<sup>22</sup>, unless sooner terminated as herein provided.

2. **CONSIDERATION:** As for this permit, Tenant agrees, at its sole cost, to exercise overall supervision, management, and maintenance of the above-described Premises used for or incidental to the skateboard park activities and related uses sponsored and scheduled by Tenant on those parcels located within the Premises. This Permit is for the benefit of the District and Tenant only and is not intended for the benefit of any third party or any other person, and no such third party or other person shall be a third party

beneficiary to this Permit or otherwise have any rights to enforce any provision of this Permit.

3. **USE:** The above-described Premises shall be used only and exclusively for the purpose of public skateboard activities and related uses sponsored and scheduled by Tenant on those parcels located within the Premises and for no other purpose whatsoever without the prior written consent of the Executive Director of District in each instance. Subject to the rights reserved by the District in Paragraph 6 below, Tenant and its designees shall have preferential use of the skateboard park that is located in the area delineated as Parcel No. 1 on attached Exhibit "A" and preferential use of the storage facility and both concession facilities that are located in the area delineated as Parcel No. 2 on attached Exhibit "A".

4. **ASSIGNMENT-SUBLEASE-ENCUMBRANCE:** Tenant shall not encumber this Permit, the Premises thereof and the improvements thereon by a deed of trust, mortgage, or any other security instrument without the express written consent of the District. Furthermore, neither the whole nor any part of the Premises nor any of the rights or privileges granted by this Permit shall be assignable or transferable in any way without such consent. Nor shall Tenant grant any permission to any other person to occupy any portion of the Premises without such consent. Any such purported assignment, transfer, sublease, encumbrance, or permission given without such consent shall be void as to District.

5. **IMPROVEMENTS:** Tenant acknowledges prior examination of the Premises and the condition thereof, and agrees that the improvements thereon, if any, are in their present condition, satisfactory and usable for Tenant's purposes and that no representations as to value or condition have been made by or on behalf of District.

Tenant agrees that it shall make no changes or alterations in the above-described premises, nor make, erect, or install any buildings, structures, signs, machines, or other improvements on the premises without the consent in writing of the Executive Director of District. Tenant further agrees to provide the proper containers for trash and to keep the premises free and clear of rubbish, debris, and litter at all times.

6. **MAINTENANCE:** Tenant hereby agrees that the Premises are in a good and tenantable condition, that Tenant will take good care of the Premises and appurtenances, including any personal property belonging to District; and that Tenant, as a part of the consideration stated above, will at Tenant's sole cost and expense keep and maintain the skateboard park improvements, appurtenances, and personal property located in the area delineated as Parcel No. 1 on attached Exhibit "A" and the interiors of the buildings located in the area delineated as Parcel No. 2 on attached Exhibit "A" and recreational equipment used for the sports activities scheduled by Tenant in good and sanitary

condition and repair during the term of this Permit, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided. At all times during the term of this Permit, District shall have free and unrestricted access to the Premises and shall retain for the purpose of storage of equipment and supplies, such storage areas within the buildings located on the Premises as it deems necessary or desirable. Tenant further agrees to provide containers for trash and garbage and to keep the above-described Premises free and clear of rubbish and litter, or any other fire hazards. District shall at no time during the term of this Permit be required to make any improvements or repairs to the above-described Premises.

7. **TITLE TO IMPROVEMENTS:** On the commencement date of the term of this Permit, the parties agree that the existing skateboard park improvements located in the area delineated as Parcel No. 1 on attached Exhibit "A" were constructed by Tenant and are owned by and title thereto vested in Tenant; and all other existing structures, buildings, installations, and improvements of any kind located on the Premises were constructed by District and are owned by and title thereto is vested in District. Except for any installations or improvements subsequently placed by Tenant in the area delineated as Parcel No. 1 on attached Exhibit "A", any installations or improvements subsequently placed on the Premises by Tenant in such fashion as to be permanently attached thereto shall be and remain the property of District and shall not be removable by Tenant.

Machines, appliances, equipment, and trade fixtures of any kind placed on the above-described premises by Tenant are owned by and title thereto is vested in Tenant and shall be removed by Tenant within thirty (30) days after the expiration of the term of this Permit or sooner termination thereof; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment, and trade fixtures are not removed within thirty (30) days after the termination of this Permit, the same may be considered abandoned and shall thereupon become the property of District without cost to the District and without payment to Tenant, except that District shall have the right to have the same removed at the expense of Tenant.

8. **REMOVAL OF MATERIALS:** Tenant hereby agrees that upon the expiration of this Permit or the sooner termination as herein provided, it will remove within thirty (30) days all ships, vessels, barges, hulls, debris, surplus, and salvage materials from the land area and water area forming a part of or adjacent to the Premises, so as to leave the same in as good condition as when first occupied by Tenant, subject to reasonable wear and tear; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus, and salvage materials shall not be so removed within thirty (30) days by Tenant, District may remove, sell, or destroy the same at the expense of Tenant; and Tenant hereby agrees to pay District the cost of such removal, sale, or destruction; or at the option of

District, the title to said ships, vessels, barges, hulls, debris, surplus, and salvage materials not removed shall become the property of District.

9. **TERMINATION:** This Permit may be terminated by Executive Director of District or his and her duly authorized representative or Tenant as a matter of right and without cause at any time upon the giving of thirty (30) days' notice in writing to the other party of such termination.

10. **HOLD HARMLESS:** Tenant shall, except for Claims (as that term is defined below) arising from the sole negligence or willful misconduct of District, defend, indemnify and hold harmless the District and its officials, officers, representatives, agents, and employees from any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment (collectively, "Claims") arising directly or indirectly out of, from, or in connection with: (a) the obligations undertaken in connection with this Permit; (b) the possession, use, occupancy, operation or development of the Premises by Tenant or Tenant's representatives, agents, employees, consultants, contractors, invitees, subtenants, successors, assigns or similar users/affiliates (collectively, "Tenant Affiliate"); (c) the approval of this Permit, or other permits or approvals granted to Tenant or a Tenant Affiliate related to the Premises, including, but not limited to, approvals or permits for the development of any structures, buildings, installations, and improvements on the Premises, or use of the Premises (collectively, "Related Approvals"); and (d) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to the California Environmental Quality Act or the National Environmental Policy Act for this Permit or Related Approvals.

Tenant acknowledges and agrees that it is the sole and exclusive responsibility of Tenant, and not the District, to: (a) ensure that all persons and/or entities (including, but not limited to, Tenant or a Tenant Affiliate) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with the development, construction, possession, use, occupancy, or operation of the Premises, this Permit and Related Approvals shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL. The obligations to defend, indemnification and hold the District harmless shall apply to, in addition to other Claims, any and all PWL Claims, except for those arising from the sole negligence or willful misconduct of District.

The District may, in its sole and absolute discretion and in good faith, participate in the defense of any Claims and the Tenant shall reimburse District for said defense, including, but not limited to, reimbursement for outside attorneys' and experts' fees, and other costs. The District's participation shall not relieve the Tenant of any of its obligations under this

Paragraph. The District shall provide reasonable notice to the Tenant of its receipt of any Claims.

This Paragraph and the other obligations of Tenant under this Permit are independent of, and in addition to, the obligations of Tenant under any existing lease(s), other contractual agreement(s) or permits with or granted by the District, and are binding upon Tenant, and its agents, representatives, successors and assigns. This Paragraph shall survive the term of this Permit.

11. **INSURANCE:** Tenant shall maintain insurance acceptable to District in full force and effect throughout the term of this Permit. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

- (1) "OCCURRENCE" form Commercial General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Permit in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement.
- (2) All Risk Property Coverage, including water damage and debris cleanup provisions, in an amount not less than the full replacement value of all Improvements located within the Premises without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include business interruption and extra expense for full recovery of the net profits and continuing expenses (including the rent to District) for the duration of the period of restoration, a vandalism and malicious mischief endorsement, sprinkler leakage coverage and, if so required by District, flood and earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of District. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to District and Tenant to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Premises and any damaged or destroyed improvements located thereon. However, if there is a

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Tenant Encumbrance held by a Financial Institution encumbering the leasehold, then all proceeds from such policies of insurance shall be payable in trust with safeguards reasonably acceptable to District to the Consented to Lender which is a Financial Institution to be disbursed for the repair and restoration of the Premises (or, if there is no Consented to Lender, or the Consented to Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of District so as to ensure the application of such proceeds in compliance with this Permit.

- (i) In the event that this Permit is terminated with consent of both District and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Premises to a neat and clean condition. Any remaining funds shall lastly be paid to District and Tenant, as their interests may appear.
- (3) In the event underground storage tanks are located on the Premises, Tenant is required to comply with Code of Federal Regulations, Title 40, Chapter I, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide District with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name District and its officers, employees, and agents as additional insureds, and all

other terms of Subparagraph (b), below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide District with a certified copy of its revised Certification of Financial Responsibility.

**(b) General Requirements**

- (1) All required insurance shall be in force the first day of the term of this Permit, and shall be maintained continuously in force throughout the term of this Permit. In addition, the cost of all required insurance shall be borne by Tenant. During the entire term of this Permit, Tenant shall provide District with Certificates, in a form acceptable to District, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, District reserves the right to require complete, certified copies of all required policies at any time.
- (2) All liability insurance policies shall name, or be endorsed to name District and its officers, employees, and agents as additional insureds and protect District and its officers, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after Tenant has furnished District with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of District. Further, all insurance companies must be satisfactory to District.
- (3) Any deductibles or self-insured retentions must be declared and acceptable to District. If the deductibles or self-insured retentions are unacceptable to District, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the District and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

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- (4) District shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of District, the insurance provisions in this Permit do not provide adequate protection for District and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, District may require Tenant to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. District's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- (5) District may require that Tenant obtain and maintain additional or increased insurance from time to time. District shall notify Tenant in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit Certificates evidencing acceptable insurance policies with District incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit Certificates evidencing acceptable insurance policies with District, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, this Permit shall be in default without further notice to Tenant, and District shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish District with renewals or binders in a timely manner, District may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant within thirty (30) days of written demand with interest at the Default Rate from the date such sums are expended.
- (6) If Tenant fails or refuses to maintain insurance as required in this Permit, or fails to provide proof of insurance, District has the right to declare this Permit in default without further notice to Tenant, and District shall be entitled to exercise all legal remedies.
- (7) The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the

indemnification provisions and requirements of this Permit. Notwithstanding said policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Permit, or with the use or occupancy of the Premises.

- (8) Tenant agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance District may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjoining premises. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises.

12. **TAXES AND UTILITIES:** This Permit may result in a taxable possessory interest and be subject to the payment of property taxes. Tenant agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Tenant or the Premises by reason of this Permit or of any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the Premises. Tenant shall also pay any fees imposed by law for licenses or permits for any business or activities of Tenant upon the Premises or under this Permit, and shall pay before delinquency any and all charges for utilities at or on the Premises.

13. **CONFORMANCE WITH RULES AND REGULATIONS:** Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it shall abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any ordinances of the city in which the Premises are located, including the Building Code thereof; any ordinances and general rules of District, including tariffs; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of District Code entitled "Stormwater Management and Discharge Control," and (ii) the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and District shall have no obligations or responsibilities as to the Premises.

14. **POLICY OF DISTRICT:** It is the policy of District that prevailing wage rates shall be paid all persons who are employed by Tenant on the property of District.

15. **DEFAULT:** If any default be made in the payment of the rental herein provided or in the fulfillment of any terms, covenants, or conditions hereof, and said default is not cured within ten (10) days after written notice thereof, this Permit shall immediately terminate and Tenant shall have no further rights hereunder and shall immediately remove from said Premises; and District shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said Premises. District shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Tenant in the amount necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform its obligations under this Permit or which in the ordinary course of things would be likely to result therefrom.

16. **LIENS:** Tenant agrees that it will at all times save District free and harmless and defend and indemnify it against all claims and liens for labor, services or materials in connection with improvements, repairs, or alterations on the Premises caused to be performed by Tenant, and the costs of defending against such claims, including reasonable attorney's fees.

17. **BANKRUPTCY:** In the event Tenant commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent, or a judicial sale is made of Tenant's interest under this Permit, this Permit shall at the option of District immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.

18. **EASEMENTS:** This Permit and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by District in, to, or over the Premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits, and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by District to be in the best interests of the development of the tidelands.

District agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Tenant.

19. **TITLE OF DISTRICT:** District's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the

provisions of said Act. This Permit is granted subject to the terms and conditions of said Act.

20. **JOINT AND SEVERAL LIABILITY:** If Tenant, as a party to this Permit, is a partnership or joint venture, or is comprised of more than one party or entity or a combination thereof, the obligations imposed on Tenant under this Permit shall be joint and several, and each general partner, joint venturer, party, or entity of Tenant shall be jointly and severally liable for said obligations. Furthermore, nothing contained herein shall be deemed or construed as creating a partnership or joint venture between District and Tenant or between District and any other entity or party, or cause District to be responsible in any way for the debts or obligations of Tenant, or any other party or entity.

21. **NONDISCRIMINATION:** Tenant agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of sex, color, race, religion, handicap or national origin. If the use provided for in this Permit allows the Tenant to offer accommodations or services to the public, such accommodations or services shall be offered by the Tenant to the public on fair and reasonable terms. In complying with all such laws, including, without limitation, the Americans With Disabilities Act of 1990, Tenant shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between District and Tenant.

22. **ENTIRE UNDERSTANDING:** This Permit contains the entire understanding of the parties, and Tenant, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the Premises. No modification, amendment, or alteration of this Permit shall be valid unless it is in writing and signed by the parties hereto.

23. **PEACEABLE SURRENDER:** Upon the termination of this Permit by the expiration thereof or the earlier termination as by the terms of this Permit provided, Tenant will peaceably surrender the Premises in as good condition, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided, as the same may be at the time Tenant takes possession thereof, and to allow District to take peaceable possession thereof.

24. **HOLDOVER:** This Permit shall terminate without further notice at expiration of the term. Any holding over by Tenant after either expiration or termination shall not constitute a renewal or extension or give Tenant any rights in or to the Premises. If Tenant, with District's consent, remains in possession of the Premises after expiration or termination of the term or after the date in any notice given by District to Tenant terminating this Permit, such possession by Tenant shall be deemed to be a month-to-month tenancy

terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, Tenant shall pay all rent required by this Permit; and if percentage rent is required by the Permit, it shall be paid monthly on or before the tenth (10th) day of each month.

All provisions of this Permit, except those pertaining to term, shall apply to the month-to-month tenancy.

25. **ACCEPTANCE OF PREMISES:** BY SIGNING THIS PERMIT, TENANT REPRESENTS AND WARRANTS THAT IT HAS INDEPENDENTLY INSPECTED THE PREMISES AND MADE ALL TESTS, INVESTIGATIONS AND OBSERVATIONS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PREMISES. TENANT AGREES IT IS RELYING SOLELY ON SUCH INDEPENDENT INSPECTION, TESTS, INVESTIGATIONS AND OBSERVATIONS IN MAKING THIS PERMIT. TENANT ALSO ACKNOWLEDGES THAT THE PREMISES ARE IN THE CONDITION CALLED FOR BY THIS PERMIT, THAT DISTRICT HAS PERFORMED ALL WORK WITH RESPECT TO PREMISES AND THAT TENANT DOES NOT HOLD DISTRICT RESPONSIBLE FOR ANY DEFECTS IN THE PREMISES. TENANT FURTHERMORE ACCEPTS AND SHALL BE RESPONSIBLE FOR ANY RISK OF HARM TO ANY PERSON AND PROPERTY, INCLUDING WITHOUT LIMITATION EMPLOYEES OF TENANT, FROM ANY LATENT DEFECTS IN THE PREMISES.

Initial: \_\_\_\_\_  
District                      Tenant

26. **WARRANTIES-GUARANTEES:** District makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Premises, including the physical condition thereof, or any condition which may affect the Premises; and it is agreed that District will not be responsible for any loss or damage or costs which may be incurred by Tenant by reason of any such condition or conditions.

27. **TERMINATION OF PRIOR AGREEMENT:** It is mutually agreed that, on the Commencement Date of this Permit, that certain Tidelands Use and Occupancy Permit filed in the Office of the District Clerk as Document No. ~~6620958609~~ made and entered into on the First day of March, 201~~7~~2, between the District and Tenant is hereby terminated. Any rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations. Further, said statute shall not be waived or extended because of this Permit. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a

release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Permit.

28. **ATTORNEY'S FEES:** In the event any suit is commenced to enforce, protect or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by District under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

29. **HAZARDOUS MATERIALS:** Tenant shall comply with all laws regarding hazardous substances, materials or wastes, or petroleum products or fraction thereof (herein collectively referred to as "Contaminants") relative to occupancy and use of the Premises. Tenant shall be liable and responsible for any Contaminants arising out of the occupancy or use of the Premises by Tenant. Such liability and responsibility shall include, but not be limited to, (i) removal from the Premises any such Contaminants; (ii) removal from any area outside the Premises, including but not limited to surface and groundwater, any such Contaminants generated as part of the operations on the Premises; (iii) damages to persons, property and the Premises; (iv) all claims resulting from those damages; (v) fines imposed by any governmental agency, and (vi) any other liability as provided by law. Tenant shall defend, indemnify and hold harmless the District, its officials, officers, agents, and employees from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorney's fees therefor. District shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, District shall have the right to assign said indemnity.

If Tenant has in the past or continues to use, dispose, generate, or store Contaminants on the Premises, District, or its designated representatives, at District's sole discretion, may at any time during the term of this Permit, enter upon the Premises and make any inspections, tests or measurements District deems necessary in order to determine if a release of Contaminants has occurred. District shall give Tenant a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in District's sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Tenant's operations. If such tests indicate a release of Contaminants, then District, at District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Permit, to have tests for such Contaminants conducted by a qualified party or parties on the Premises. If District has reason to believe that any Contaminants that originated from a release on the Premises have contaminated any area outside the Premises, including but not limited to surface and groundwater, then

District, at District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Permit, to have tests for such Contaminants conducted by a qualified party or parties on said area outside the Premises.

The tests conducted by Tenant's qualified party shall include, but not be limited to, applicable comprehensive soil, emission, or groundwater sampling test or other procedures to determine any actual or possible contamination. Tenant shall expeditiously, but no longer than thirty (30) days after District's request for such tests, furnish to District the results of said tests, sampling plans, and analysis thereof identifying any Contaminants which exceed then applicable levels permitted by federal, state, or local laws. Tenant shall report such contamination to the District within seventy-two (72) hours and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation.

**30. UNDERGROUND STORAGE TANKS:** In the event any underground storage tanks are located on the Premises or hereinafter placed on the Premises by any party during the term or extension of this Permit, Tenant shall be responsible for tank monitoring of all such underground storage tanks as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take responsibility for reporting unauthorized releases to HMMD and the District within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of Contaminants including but not limited to investigative, surface and groundwater cleanup, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the underground tank system. Tenant further agrees to be responsible for maintenance and repair of the storage tanks, obtaining tank permits, filing a business plan with HMMD or other responsible agency and for paying underground storage tank fees, permit fees, and other regulatory agency fees relating to underground storage tanks.

Tenant agrees to keep complete and accurate records on the Premises for a period of not less than thirty-six (36) months from the applicable events, including, but not limited to permit applications, monitoring, testing, equipment installation, repairing and closure of the underground storage tanks, and any unauthorized releases of Contaminants and make such records available for District or responsible agency inspection. Tenant further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Tenant and any Operator of such underground storage tanks.

Furthermore, Tenant shall be responsible for compliance with all other laws and regulations presently existing or hereinafter enacted applicable to underground storage

tanks, including without limitation any such laws and regulations which alter any of the above requirements.

**31. ABOVEGROUND STORAGE TANKS:** Tenant shall be responsible for any aboveground storage tanks on the Premises. Tenant shall, in accordance with this Permit and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said laws and regulations. In addition, Tenant shall maintain and repair said tanks and conform and comply with all other applicable laws and regulations for aboveground storage tanks, including without limitation all of the requirements of Health & Safety Code, Sections 25270 through 25170.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board, District, or responsible agency, to conduct periodic inspections and complying with valid orders of said Board, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. Tenant shall be responsible for all costs associated with an unauthorized release from such tanks, including but not limited to, investigative, surface and groundwater cleanup, expert and agency fees.

**32. DISPUTE RESOLUTION:** Except for (i) a dispute or disagreement as to the amount of rent that Lessee is to pay Lessor or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Permit, such parties shall first attempt to resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

33. **NOTICES:** Any notice or notices provided for by this Permit or by law to be given or served upon Tenant may be given or served by certified or registered letter addressed to Tenant at City of Coronado, Attention: City Manager, 1825 Strand Way, Coronado, CA 92118 and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Permit or by law to be served upon District may be given or served by certified or registered letter addressed to Executive Director of District at the Administrative Offices of the San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488 and deposited in the United States mail, or may be served personally upon said Executive Director or his and her duly authorized representative; and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

34. **SECTION HEADINGS:** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

(SIGNATURE PAGE FOLLOWS)



35. **SIGNATURE OF PARTIES:** It is an express condition of this Permit that said Permit shall not be complete nor effective until signed by either the Executive Director or his or her authorized designee on behalf of District and by other party.

APPROVED AS TO FORM AND LEGALITY  
GENERAL COUNSEL

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_  
Assistant/Deputy

~~President,~~

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

~~Tony Gordon~~~~Shaun D. Sumner~~  
~~Real Estate Director~~~~Assistant Vice~~

~~Real Estate Development~~

**CITY OF CORONADO, a municipal  
corporation**

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

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_