

RIGHT OF ENTRY PERMIT

THIS RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between DENNIS MCKEE, an individual ("MCKEE"), and THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of the date of execution by MCKEE (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. MCKEE is the owner of certain real property (the "MCKEE Property") located on Lyons Peak and more particularly described in **EXHIBIT A: MCKEE Property**, attached hereto.
- B. CITY leases certain real property on Lyons Peak (the "CITY Leasehold") from the United States of America for use as a mobile radio communications facility.
- C. The CITY Leasehold is currently accessible only by a road (the "Access Road") across the MCKEE Property, as shown in **EXHIBIT A: MCKEE Property**.
- D. Under the terms and conditions of this Permit, MCKEE will allow CITY to use the Access Road for the sole purpose of ingress and egress to and from the CITY Leasehold.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Right to Enter.** Subject to the terms and conditions of this Permit, MCKEE hereby grants permission to CITY, its employees, agents, contractors, and invitees to enter upon the Access Road solely for the purpose of ingress and egress to and from the CITY Leasehold to conduct routine maintenance, periodic replacement installations, and emergency repairs on the CITY Leasehold (the "Permit Use"), and for no other purpose whatsoever.
- 2. **Use of Access Road.** CITY may use the Access Road on a non-exclusive basis solely for the purposes of the Permit Use. Except in emergencies, CITY shall notify MCKEE by telephone at least 24 hours prior to using the Access Road. MCKEE may impose reasonable rules and restrictions as to CITY'S use of the Access Road, such as speed limits and times of day, provided such rules allow for emergency access by CITY.
- 3. **Emergency Access.** In emergencies, CITY may use the Access Road at any and all times without prior notice to MCKEE. MCKEE shall provide to CITY a means of entry through any gates or other security devices to allow such emergency use.
- 4. **Term.** The term of this Permit shall be five (5) years, commencing on the Effective Date. This Permit may be terminated by either party upon six (6) months prior written notice.
- 5. **Permit Fee.** CITY shall pay to MCKEE a permit fee in the amount of One Hundred Dollars (\$100) per month, payable annually.

6. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the MCKEE Property.
7. Noninterference. CITY shall not unreasonably interfere with MCKEE'S use, operations, and activities on the Access Road, and CITY shall follow such procedures on the Access Road as shall result in the least inconvenience to MCKEE and other users of the Access Road.
8. Indemnification. CITY shall protect, defend, indemnify, and hold MCKEE harmless from and against any claims or liability directly related to the Permit Use and arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents, and employees.
9. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
10. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.

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11. Notices. Unless otherwise provided, any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

MCKEE: DENNIS MCKEE
12497 Lyons Valley Road
Jamul, CA 91935
Telephone: (619) 468-3837 619-916-8662

CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: James F. Barwick, Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
Telephone: (619) 236-6020

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 6-8-07

Dennis McKee
DENNIS MCKEE, an individual

Date: 6/12/07

THE CITY OF SAN DIEGO, a California municipal corporation

BY: David A. Sandoval, CCIM
Name: David A. Sandoval, CCIM
Title: Deputy Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

Date: 6/12/07

MICHAEL J. AGUIRRE, City Attorney

BY: Brock Ladewig
Name: BROCK LADEWIG
Title: CHIEF DEPUTY CITY ATTORNEY

EXHIBIT A: MCKEE Property

APN 599-141-05

