

**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SULLIVAN MOVING & STORAGE COMPANY ("PERMITTEE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents and contractors to enter upon that CITY-owned real property (the "Permit Area") located along Copley drive (APN: 356-400-36), containing a total of approximately 1.0 acres, and as specifically set forth in the attached Exhibits A and B.
2. Use of Permit Area. PERMITTEE may enter upon and use the Permit Area solely and exclusively for the purpose of storage of PERMITTEE'S moving and storage transportation vehicles. PERMITTEE shall not allow any person to clean, maintain or in anyway utilize vehicles or vans on site or to conduct business in any form. PERMITTEE shall ensure that no person shall remain on board any motor vehicle or anywhere on the premises overnight. To comply with land use restrictions of the local property owners' association, PERMITTEE shall place a fence with screening upon or within the fence around the perimeter of the Permit Area. PERMITTEE shall lay a suitable rock substrate of decomposed granite over the existing dirt. With CITY'S prior written consent, PERMITTEE may also use the Permit Area for other related or incidental uses associated with a storage lot, and for no other purpose whatsoever. PERMITTEE shall not conduct any activities on the Permit Area before 6:00 A.M. or after 8:00 P.M. every day. PERMITTEE shall continuously occupy and use the Permit Area throughout the term of this Permit. PERMITTEE'S unauthorized use of the Permit Area or PERMITTEE'S failure to continuously occupy and use the Permit Area as provided herein shall be a default and subject this Permit to termination at CITY'S sole option.
3. Term. The term of this Permit ("Term") shall be three (3) years commencing on the first day of the calendar month following the Effective Date. "Permit Year" as used in this Permit shall mean the first 12 calendar months of the Term and each 12-month period thereafter during the Term. PERMITTEE may terminate this Permit upon 180 days prior written notice to CITY.
4. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion, upon 180 days prior written notice to PERMITTEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may enter upon the Permit Area at all times upon prior notice to PERMITTEE.

5. Permit Fee. PERMITTEE SHALL PAY a six hundred dollar (\$600) non-refundable processing fee payable to the City Treasurer. In addition, PERMITTEE shall pay monthly rent during the Term in accordance with the following rent schedule, which reflects a five percent (5%) annualized rent escalation:

First Permit Year \$ 3,958.75 per month

Second Permit Year \$ 4,156.69 per month

Third Permit Year \$ 4,364.52 per month

- a. Delinquent Rent. If PERMITTEE fails to pay the rent when due, PERMITTEE shall pay, in addition to the unpaid rent, five percent (5 %) of the delinquent rent. If the rent is still unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] of the delinquent rent, which is agreed to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payment of rent be less than twenty-five dollars (\$25).
- b. Time and Place of Rent Payment. Rent is due monthly in advance on or before the first day of each calendar month. Checks shall be made payable to the City Treasurer and mailed to the **Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165**, or delivered to the **Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California**. The place and time of payment may be changed at any time by CITY upon thirty (30) days prior written notice to PERMITTEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. PERMITTEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
6. Security Deposit. PERMITTEE shall deliver to CITY a security deposit in the amount of Six Thousand Dollars (\$6,000) with the first month's rent. CITY shall not be liable to PERMITTEE for any interest thereon. Any interest earned from such deposit or redeposit shall be and remain the property of CITY. All or any portion of the principal sum shall be available unconditionally to CITY to correct any breach or default of this Permit by PERMITTEE, PERMITTEE'S successors or assigns, or for expenses incurred by CITY as a result of PERMITTEE'S breach or default of this Permit. **PERMITTEE shall maintain the security deposit throughout the Term. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its customers' property from the Permit Area.**
- a. If CITY utilizes all or any portion of the security deposit, upon ten days prior written notice, PERMITTEE shall reimburse the security deposit to the full required amount.

- b. Upon thirty (30) days prior written notice by CITY, PERMITTEE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure PERMITTEE'S obligations under this Permit.
 - c. Provided PERMITTEE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to PERMITTEE within ninety (90) days after the expiration or termination of this Permit.
7. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Permit Area. All utilities shall be installed underground.
8. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
9. Improvements/Alterations. Except as otherwise provided in this Permit, PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without CITY'S prior written consent. PERMITTEE shall not make any major structural or architectural design alterations to approved improvements, structures or installations on the Permit Area without CITY'S prior written consent, which may not be unreasonably withheld. This provision shall not relieve PERMITTEE of any obligation under this Permit to maintain the Permit Area in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
10. Ownership of Improvements and Personal Property.
- a. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Permit Area now existing or constructed on the Permit Area by PERMITTEE shall be deemed to be part of the Permit Area and shall become CITY'S property free of all liens and claims. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or within 180 days prior to the expiration of the Term, elect not to assume ownership of all or any improvements, trade fixtures, structures, and installations. PERMITTEE shall, at PERMITTEE'S sole cost and expense, remove all such improvements, structures and installations prior to the expiration of the Term, or within sixty (60) days after a notice of termination. If PERMITTEE fails to remove any improvements, structures, and installations as required by this Permit, PERMITTEE shall pay CITY the full cost of any removal.

- b. Personal Property. PERMITTEE shall remove PERMITTEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property prior to the expiration of the Term, or as soon as reasonably practicable after a notice of termination, but in no event later than sixty (60) days after such notice of termination. Any such items which PERMITTEE fails to remove shall be deemed abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE'S sole cost and expense. If any removal of such personal property by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at its sole cost and expense.
 - c. Late Removal. PERMITTEE shall pay additional rent for any period of time needed to remove any improvements or personal property, whether by CITY or PERMITTEE, after the expiration or termination of this Permit. Such additional rent shall be at the rate in effect immediately prior to such expiration or termination.
 - d. CITY'S Right to Acquire. Notwithstanding the foregoing, if PERMITTEE elects to dispose of any of its personal property used in its operations on the Permit Area, upon expiration or termination of this Permit, CITY shall have the first right to acquire or purchase such personal property.
11. Insurance. PERMITTEE shall obtain and maintain at all times during the Term the following insurance at its sole expense:
- a. Public liability and property damage insurance in the amount of not less than three million dollars (\$3,000,000) combined single limit liability with an occurrence form. Such policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or PERMITTEE or by authorized representatives of CITY or PERMITTEE on or in connection with the use or operation of the Permit Area; and
 - b. Fire, extended coverage, and vandalism insurance on all insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost, including but not limited to containers and recreational vehicles. Any proceeds from a loss shall be payable jointly to CITY and PERMITTEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
 - i. Additional Insured. All insurance policies shall name "CITY, its elected officials, officers, representatives, agents and employees" as an additional insured, protect CITY against any legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Permit Area, and full applicable fire insurance coverage shall be effective upon completion of each

insurable improvement. A copy of the insurance policy shall remain on file with CITY during the entire Term of this Permit. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.

- ii. Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.
 - iii. Accident Reports. PERMITTEE shall report to CITY any accident causing more than five thousand dollars (\$5,000) worth of property damage or any serious injury to persons on the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
 - iv. Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. PERMITTEE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its customers' property from the Permit Area.**
12. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S development, use, or maintenance of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its

election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

13. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
14. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.
15. Drug-free Workplace. PERMITTEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. PERMITTEE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
16. Disabled Access Compliance. PERMITTEE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
17. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and

any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

18. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
19. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
20. Signs. PERMITTEE shall not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.
21. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S development, use, or maintenance of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
22. Maintenance of the Permit Area. PERMITTEE shall, to CITY'S satisfaction, maintain the Permit Area in a decent, safe, healthy and sanitary condition at all times during the Term.
23. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area, including without limitation the following:
 - a. Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control; and
 - b. Municipal Code Chapter 14, Article 2, Division 1: Grading Regulations, Division 2: Storm Water Runoff and Drainage Regulations, and Division 3: Fence Regulations.

24. Water Quality Assurances. In complying with all laws as required by this Permit, PERMITTEE shall employ "Best Management Practices," including a "Storm Water Pollution Prevention Plan," as those terms are defined by the Municipal Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first 30 days of the Term of this Permit, PERMITTEE shall submit a Prevention Plan, satisfactory to CITY, which will control erosion and reduce the amount of "Pollutants", as defined by the Municipal Code, and other sediments discharged from the Permit Area. CITY may review the Prevention Plan periodically. Upon thirty (30) days prior written notice from CITY requesting an update of the Prevention Plan, PERMITTEE shall submit an updated Prevention Plan to the satisfaction of CITY. PERMITTEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances and regulations. PERMITTEE shall be solely responsible for informing its employees, contractors, subcontractors, agents, and vendors of the Prevention Plan and assuring their compliance therewith.
25. Inspection. CITY may, at all times upon prior notice, enter and inspect the Permit Area.
26. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
- a. If any release of a hazardous substance occurs, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - b. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S development, use, or maintenance of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - c. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY

immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent.

- d. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Permit Area shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Permit Area, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.
27. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
28. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
29. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
30. Legal Proceedings. If CITY commences legal proceedings to enforce any right or obligation under this Permit, PERMITTEE shall pay all costs in connection therewith, including reasonable attorney fees and costs.

31. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attn: Stephen L. Geitz, Supervising Property Agent
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

SULLIVAN MOVING & STORAGE COMPANY
Attention: Mark Fischer
5704 Copley Drive
San Diego, California 92111

32. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for PERMITTEE'S development, use, or maintenance of the Permit Area.

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33. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

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

Date: 3/13/07

THE CITY OF SAN DIEGO, a California municipal corporation

BY: David Sandoval
Name: DAVID SANDOVAL
Title: DEPUTY DIRECTOR REAL ESTATE ASSETS

Date: 3/6/07

SULLIVAM MOVING & STORAGE

BY: Mark A. Fischer
Name: Mark A. Fischer
Title: PRESIDENT

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

THIS ACTIVITY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO STATE CEQA GUIDELINES, SECTION _____.

Date: 3/26/07

BY: Nicole A. Meginnis
Name: NICOLE A. MEGINNIS
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Effective Date: 3/27/07

MICHAEL J. AGUIRRE, City Attorney

BY: San Blas, Deputy City Attorney

EXHIBIT A

