

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 municipal corporation ("CITY"), and Otay Terminal-Calle Fortunada, LLC ("PERMITTEE"), to be effective as of the date of execution by CITY (the "effective date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of certain real property (the "City Property") located at the Montgomery Field Airport in the City of San Diego, CA. (Airport), consisting of approximately 56,220 square feet in size, as more particularly described in Exhibit A: Permit Area, attached hereto and incorporated by this reference.
- B. Permittee intends to use the site as a short term parking lot for motor vehicles.
- C. Under the terms and conditions of this Permit, City will allow Permittee to use the Permit Area for the sole purpose of providing short term parking to its patrons.

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, CITY hereby grants permission to PERMITTEE, its employees, agents, contractors, invitees, tenants and patrons to enter upon the Permit Area solely for the purpose of providing short term parking to its customers.
- 2. Permit Area: The "PERMIT AREA" is hereby defined to be a parcel of land, which has not been surveyed, measuring approximately 56,220 square feet in size. The land is an asphalt parking lot improved with landscaping and a perimeter chain link fence in the northwest corner of Montgomery Field Airport, City of San Diego. The area is known as the Otay Terminal Parking Lot. The approximate layout of the parcel and space is shown on Exhibit A, attached to this PERMIT and incorporated by this reference. The parties hereby agree that all of the descriptions given for the parcel are approximate and that all measurements and descriptions are only approximations and the parties expressly waive any further determination of the exact metes and bounds or area of the property since neither party wishes to expend funds to accurately determine the exact boundaries. The parties waive any right to adjustment of fees or charges should it later be discovered that the actual amount of land provided measures less or more than the amount estimated herein.

3. Use of Permit Area: PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes set forth in this permit. Permittee shall obtain all related permits and security for the permit area. PERMIT AREA shall be limited to short term auto parking. No vehicles which are leaking noticeable amounts of oil fluid, transmission fluid, brake fluid, antifreeze or any other hazardous fluid or materials are to be brought onto the PERMIT AREA nor kept on the PERMIT AREA. All vehicles are to have current registration or appropriate transit documentation. No residential use of the PERMIT AREA is permitted.

PERMITTEE shall not use the PERMIT AREA for any other use without the prior written approval of the Mayor or his designee.

4. Permit Fees.

- a. On or before the Effective Date, PERMITTEE shall pay to CITY a one-time, non-refundable permit processing fee of Six Hundred Dollars (\$600), payable to the San Diego City Treasurer.
- b. PERMITTEE shall pay CITY a monthly PERMIT fee in the sum of Sixteen and One Half cents (\$.165) per square foot per month commencing on June 1, 2007.
- c. The monthly PERMIT fee shall be Nine Thousand Two Hundred Seventy-Six dollars and Thirty Cents (\$9,276.30).
- d. PERMIT fee will be increased by Three Percent (3%) each year on the anniversary date of this PERMIT.
- e. PERMIT fees shall be paid by check, payable to the CITY Treasurer, and mailed to:

Office of the CITY Treasurer
P.O. Box 122289
San Diego, CA 92112-4165

or,

Delivered in person to:

Office of the CITY Treasurer
Civic Center Plaza, First floor
1200 Third Avenue
San Diego, CA 92101

Payments shall be made on or before the first day of each month. The first and last monthly PERMIT fees will be prorated as necessary to achieve payment on the first of the month. To compensate CITY for the loss of interest income and staff time associated with monitoring and follow-up on late payments, payments postmarked or paid in person after the first of the month will be subject to a late fee of ten percent (10%) of the monthly

PERMIT fee if one (1) to fifteen (15) days past due, and to an additional ten percent (10%) [for a total of twenty percent 20%]] late fee if sixteen (16) or more days past due.

5. Security Deposit. PERMITTEE shall deposit with CITY a security deposit in the amount of Five Thousand Dollars (\$5,000) to secure PERMITTEE'S obligations under this Permit, including without limitation the maintenance and restoration of the Permit Area. CITY shall not be liable to PERMITTEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the security deposit, but shall be and remain the property of CITY. All or any portion of the security deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by PERMITTEE, 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 property from the Permit Area.
 - 5.1 Utilization. If CITY utilizes all or any portion of the security deposit, then upon ten (10) days prior written notice PERMITTEE shall reimburse the security deposit to the full required amount.
 - 5.2 Increase. Upon ten (10) 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.
 - 5.3 Return. Provided PERMITTEE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to PERMITTEE within sixty (60) days after the expiration or termination of this Permit.
6. Term. This PERMIT shall be in effect on June 1, 2007 through May 31, 2010, and may be terminated on one hundred and twenty (120) days prior written notice from either party to the other.
7. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the City Property, and may be revoked at will by CITY, in its sole discretion. 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 pursuant to its terms. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit pursuant to its terms. CITY may at all times enter upon the Permit Area.
8. FAA Approval. PERMITTEE acknowledges that this PERMIT is for a temporary use of a portion of an airfield subject to Federal oversight through the Federal Aviation

Administration. PERMITTEE also acknowledges that PERMITTEE's use of the PERMIT AREA is subject to the written approval of this PERMIT by the Federal Aviation Administration (FAA) prior to commencement of the PERMIT term and each and every year prior to any period of extension, if any. Further, the parties agree that the PERMIT AREA to which the PERMIT pertains is subject to the control, oversight and regulation of the FAA and that the FAA must also approve this PERMIT as to the uses to which the PERMIT AREA will be subject.

9. 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 his or her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
10. 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 the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other federal, state or local governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
11. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEE shall promptly remove any and all improvements it installed in, on, under, or above the Permit Area and restore the Permit Area to its original condition, all at PERMITTEE'S sole cost and expense.
12. Insurance. Prior to approval of this PERMIT by CITY, PERMITTEE shall deliver to CITY a certificate of insurance and a separate endorsement to cover the following:
 - a. Public liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This 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 activities conducted on the PERMIT AREA.
 - b. Additional Insured. All insurance policies will name "CITY of San Diego, its elected officials, officers, representatives, agents and employees" as an additional insured on a separate endorsement, and shall protect CITY against any legal costs in defending claims. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the PERMIT. A copy of each policy will remain on file with CITY during the entire term of the PERMIT. At least thirty (30) days prior to the expiration of each policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this PERMIT.

13. Accident Reports. PERMITTEE will report to CITY any accident, resulting in injury or death to a person or persons, on the PERMIT AREA, of which Permittee has actual or constructive knowledge, within twenty-four (24) hours of each occurrence, or sooner if reasonably possible. This report will contain the name(s) and address(es) of the party(ies) involved, a statement of the circumstances, the date and hour, the name(s) and address(es) of any witness(es) and other pertinent information, as legally permissible.
14. Hold Harmless. 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, agents, contractor's, patrons, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property, 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. Nothing in this paragraph shall adversely affect insurance coverage available to PERMITTEE.
15. 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.
16. Permittee's Risk. All risks in connection with PERMITTEE's use of the PERMIT AREA and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by PERMITTEE. CITY shall not be liable for any loss or damage or vandalism to PERMITTEE's inventory, personal property or trade fixtures located in the PERMIT AREA except to the extent caused by the sole negligence or sole willful misconduct of City, its elected officials, officers, representatives, agents or employees.
17. Nuisance. PERMITTEE shall not use the PERMIT AREA in any manner which, in the opinion of the Mayor or his designee, creates a nuisance or disturbs the quiet enjoyment of

persons in the surrounding area.

18. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or the City Property without CITY'S prior written consent. 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 Lease.

18.1 Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

18.2 Indemnity. 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 occupancy, use, development, maintenance, or restoration 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.

18.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof 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 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 or the City Property.

18.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause

an environmental assessment of the suspect area to 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 have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such 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. If the environmental assessment indicates that the presence of hazardous substances on, in, or under the PERMIT AREA or City Property is likely attributable to Permittee's occupancy, use, development, maintenance, or restoration of the PERMIT AREA, then PERMITTEE shall cause or if PERMITTEE fails to do so within a reasonable period of time, CITY may 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.

19. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the City Property, and PERMITTEE shall use such routes and follow such procedures on the City Property as shall result in the least damage and inconvenience to CITY and other users of the City Property.
20. Property Damage. PERMITTEE shall pay for all damage to the City Property and CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEE shall promptly repair and restore to its original condition all such property.
21. Trash and Refuse. PERMITTEE will maintain the PERMIT AREA in a clean, orderly and sanitary condition throughout the term of this PERMIT, and PERMITTEE will promptly remove all trash and debris from the PERMIT AREA and dispose of it in a legal disposal site. PERMITTEE shall maintain trash containers in the PERMIT AREA at all times throughout the term of this PERMIT.
22. 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.
23. 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 City Property resulting directly or indirectly thereby.

24. Taxes. PERMITTEE recognizes and understands that this PERMIT may create a possessory interest subject to property taxation and that PERMITTEE may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid CITY under this PERMIT. PERMITTEE shall pay any tax or assessment before it becomes delinquent. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
25. Compliance with Laws. PERMITTEE shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal laws, ordinances and regulations now in effect or which may hereafter be in effect, which pertain to the PERMIT AREA.
26. No Assignment or Subletting. PERMITTEE shall not assign any rights granted by this PERMIT or any interest therein. Any assignment by operation of law shall automatically terminate this PERMIT. Further, no subletting is permitted without prior written consent from the CITY which shall not be unreasonably withheld. PERMITTEE shall not allow any other person, except employees, tenants, agents and guests of PERMITTEE to use or occupy the PERMIT AREA or any part of the PERMIT AREA.
27. Signs. No signs, except for directional signage and signs regulating or restricting parking typically found in parking lots, shall be displayed on the PERMIT AREA without the prior written consent of the Mayor or his designee.
28. Encumbrances. PERMITTEE shall keep the PERMIT AREA free from all encumbrances and liens of any nature during the term of this PERMIT. PERMITTEE shall defend, hold harmless and indemnify CITY from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys' fees), which may be filed or instituted 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.
29. Maintenance of the Permit Area. PERMITTEE shall be solely responsible for maintaining the PERMIT AREA in a decent, safe, healthy and sanitary condition at all times during the entire term of this PERMIT to the satisfaction of the Mayor or his designee.
30. 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 publicly-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 to 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.

31. Oral Representations. This PERMIT contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.
32. Inspection. CITY may enter and inspect the operations and PERMIT AREA at any time.
33. Legal Proceedings. Should it become necessary for CITY to commence legal proceedings to collect any payments due hereunder or to enforce any other condition of this PERMIT, PERMITTEE agrees to pay all legal costs in connection therewith, including reasonable attorneys' fees.
34. Utilities. All utilities shall be provided and paid by PERMITTEE.
35. Authority. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Lease 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 Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
36. Notices. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to PERMITTEE at the address listed below or to such other address designated in writing by PERMITTEE; and to CITY as follows:

Notices to CITY shall be mailed to:

CITY of San Diego
Real Estate Assets Department
Attention: Deputy Director, Airports Division
3750 John J. Montgomery Drive
San Diego, CA 92123

Notices to PERMITTEE shall be mailed to:

Jeffrey H. Silberman, President
Carleton Management, Inc.
11440 West Bernardo Court, Suite 240
San Diego, CA 92127

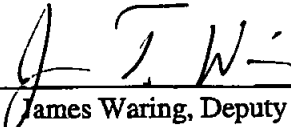
or to any address designated in writing by the respective party to the other party.

Throughout the duration of this PERMIT the PERMITTEE shall maintain and keep current a contact telephone number with the City of San Diego. The number shall be provided concurrent with the execution of this lease. CITY shall be notified of any changes of telephone number immediately.

IN WITNESS WHEREOF, this Right of Entry Permit is executed by CITY, acting by and through its Mayor or Mayor's designee, and by PERMITTEE.

CITY OF SAN DIEGO

Date: 7-9-07

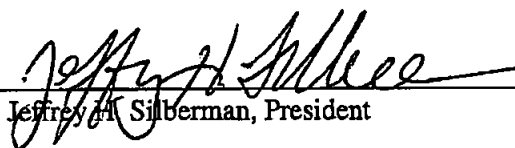
By: 

James Waring, Deputy Chief
Land Use and Economic Development

PERMITEE
Otay Terminal-Calle Fortunada, LLC

By: Carleton Management, Inc., Manager

Date: 7-6-07

By: 

Jeffrey H. Silberman, President

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

ENVIRONMENTAL ANALYSIS SECTION

Date:

7/9/07

By:

Myra H. Korman

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date:

7/9/07

By:

John P. Pardo
Deputy City Attorney

EXHIBIT "A"

MAP 9245

LOT 3

PARKING EASEMENT
33.779 sq. ft.
doc. 23332.61

PARKING EASEMENT
22.441 sq. ft.
doc. 23332.62

MONTGOMERY FIELD

MAP 6577

AERO DRIVE

