

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 KIRSCHCOHN, INC., a California corporation ("PERMITTEE"), to be effective as of the date signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY is the owner of real property located in the County of San Diego, State of California, located at 2688 E. Mission Bay Drive, San Diego, California 92109, consisting of 2.158 acres of land with a 4,600 square-foot vacant building, landscaping and parking (the "Property" or "Permit Area"), as shown in the **Exhibit "A": Permit Area**, attached hereto.
- B. To complete it due diligence prior to leasing the Property, CITY will grant PERMITTEE and/or PERMITTEE'S contractors access to the Property under the terms and conditions of this Permit.

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, and contractors to enter upon the Property for the Permit Use set forth below in Section 2, **Use of Permit Area**. At least 24 hours in advance, PERMITTEE shall coordinate building access with **Stacy McKenzie, Mission Bay Park Manager at (619) 235-1154**.
- 2. **Use of Permit Area.** PERMITTEE may use the Permit Area on a non-exclusive basis for the purpose of conducting investigations, surveys, studies, measurements, and analyses of the Property, all subject to CITY'S prior approval in each instance, and to maintain and restore the Permit Area as required by this Permit (the "Permit Use"). PERMITTEE is specifically precluded from altering and/or modifying the Property in any manner. PERMITTEE shall obtain all required permits for the Permit Use. PERMITTEE shall deliver to CITY copies of all written reports and findings related to the Permit Use ("Reports") as soon as they are available. PERMITTEE shall promptly repair any and all damage resulting from the Permit Use and restore the Permit Area as reasonably directed by CITY and to CITY'S reasonable satisfaction, but in no event shall PERMITTEE be required to improve the Permit Area beyond its condition immediately prior to the Permit Use, unless the required repairs cannot be performed without improving the condition of the Property.
- 3. **Permit Fee.** Consideration to CITY for granting the license under this Permit shall be the completion of the Permit Use and the delivery of the copies of Reports as required by this Permit.

4. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall expire on June 30, 2012. In no event shall the Term exceed three (3) years. Either party may terminate this Permit at any time upon three (3) days prior written notice to the other party. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of CITY'S 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.
5. Revocable License. This Permit is not a lease. It grants a non-exclusive license to use CITY-owned 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. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation of the license granted by this Permit.
6. 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.
7. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:
 - i. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - ii. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - iii. Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

The following apply to all of the foregoing insurance requirements:

- 7.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- 7.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 7.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 7.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. 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. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 7.6. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage 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, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to the Permit Use or the Permit Area.
- 7.7. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or 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.
8. 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, invitees, guests, agents, or contractors which arise out of or are in any manner directly or indirectly connected with

this Permit, the Permit Use, or PERMITTEE'S use of or 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 sole negligence, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. The rights and obligations under this section shall survive the expiration or termination of this Permit.

9. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permit Use, and for any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
10. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all competent legal authority now in effect or which may hereafter be in effect, which pertain to the Permit Area and the Permit Use.
11. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest therein without CITY'S prior written consent.
12. Encumbrances. PERMITTEE shall keep the Property and 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, the Permit Use, or PERMITTEE'S use 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 Property or 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.
13. No Signs. PERMITTEE shall not install any sign on the Permit Area without CITY'S prior written consent.
14. Improvements/Alterations. Except as otherwise provided in this Permit, PERMITTEE shall not construct or install any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without CITY'S prior written consent. This provision shall not relieve PERMITTEE of any obligation under this Permit to restore the Permit Area to CITY'S satisfaction. 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.
15. Noninterference. PERMITTEE represents and warrants the Permit Use shall be conducted in such a manner that will not unreasonably interfere with any other person's legal use of the Property.

16. Inspection. CITY may, at any and all times, enter and inspect the Permit Area and/or the Permit Use.
17. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. PERMITTEE shall not allow installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
- a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. 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 is hereby incorporated into this Permit.
- b. Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- c. Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- d. 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 without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. CITY shall protect, defend, indemnify, and hold PERMITTEE harmless from any and all claims, costs, and expenses related to environmental liabilities arising solely from conditions existing, or acts or omissions occurring, prior to PERMITTEE'S occupancy of the Permit Area.
- e. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.
- f. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight 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, from or under the Permit Area, 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, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE

shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

18. 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.
19. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
20. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties related to the Permit Use. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
21. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
22. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO
Director, Real Estate Assets Department
1200 3rd Avenue, Suite 1700, M.S. 51A
San Diego, California 92101

Kirschcohn, Inc.
Attn: David Cohn
2790 Truxtun Road, Suite 120
San Diego, CA 92106
(619) 236-1299 ext 206 Fax: (619) 236-1300

23. 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 Use or PERMITTEE'S

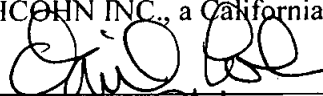
use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the Permit Use or PERMITTEE'S use of the Permit Area.

24. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement 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 Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants 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.

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

Date: NOVEMBER 14, 2011

KIRSCHCOHN INC., a California corporation

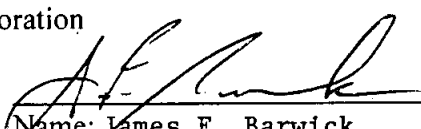
BY: 

Name: DAVID COHN

Title: PRESIDENT

Date: 11/22/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 

Name: James F. Barwick

Title: Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is exempt from State CEQA Guidelines section
15202.

Date: 11/22/11

BY: Martha Blake
Name: Martha Blake
Title: Senior Planner

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: Debra J. Bellier
Name: Debra J. Bellier
Title: Deputy City Atty.

Exhibit "A": Permit Area

