

ORIGINAL

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 TERRA VISTA MANAGEMENT, INC ("PERMITTEE"), to be effective as of the date the Permit is 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 at 2727 De Anza Road, San Diego, California 92109 (the "Property"), and more particularly depicted by the yellow outlined area on **Exhibit A: Permit Area**, attached hereto and by this reference incorporated herein (the "Permit Area").
- B. PERMITTEE wishes to enter upon the Permit Area to inspect the property conditions as described in the Permit, below and as outlined in more detail in **Exhibit B: Scope of Work**, attached hereto and by this reference incorporated herein.

NOW THEREFORE, based upon the forgoing Recitals, which are incorporated into this Permit by this reference, and 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 to enter upon the Permit Area for the Permitted Uses, as defined in this Permit. PERMITTEE shall provide the CITY with a copy of any and all reports and findings resulting from PERMITTEE's activities conducted pursuant to this Permit, without warranty or representation by PERMITTEE.
- 2. Revocable License. This Permit is not a lease. It is a license to access the Permit Area for the purposes stated herein, 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. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY's revocation or termination of this Permit. CITY may at all times enter upon the Permit Area.
- 3. Term. The term of this Permit ("Term") shall be four (4) months, commencing on the Effective Date.
- 4. Permit Fee. PERMITTEE shall pay CITY a one-time, non-refundable permit processing fee in the amount of Nine Hundred Sixty Dollars (\$960) payable to City Treasurer.
- 5. Holdover. Any holding over by PERMITTEE after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit. The occupancy of the Permit Area after the expiration or earlier termination of this Permit shall constitute an at will revocable license, and all other terms and conditions of this Permit shall continue

in full force and effect, except that PERMITTEE shall then pay to CITY fair market rent as determined by CITY.

6. Use of Permit Area. PERMITTEE may use the Permit Area for the following uses and for no other purpose whatsoever (referred to hereinafter as the "Permitted Uses"):

To inspect utility lines, including but not limited to gas, sewer, storm drains, water, irrigation, electrical, cable, and phone lines, roads, walkways, common areas, buildings, and pools, all as further described in more detail on Exhibit "B" (Scope of Work). This Permit does not authorize PERMITTEE to undertake any destructive testing in the Permit Area.

7. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Property, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area for the Permitted Use, relative to any such superior interest, when requested by CITY. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
8. Management Contractor. PERMITTEE acknowledges that the Permit Area is managed by a third-party contractor of CITY. PERMITTEE must coordinate its access to and use of the Permit Area with CITY and CITY's contractor in advance. PERMITTEE must undertake the Permitted Uses in the least disruptive manner possible.
9. Restoration of the Permit Area. Upon thirty (30) days after the expiration or termination of this Permit, PERMITTEE shall restore the Permit Area to the same condition as existed immediately prior to the Effective Date, subject to the satisfaction of the City.
10. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego or his designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
11. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Permit Area other than the Permitted Use. Any use of the Permit Area that was not previously approved in writing by the CITY or otherwise authorized by this Permit, shall subject PERMITTEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Permit Area shall be returned to its condition on the Effective Date, as well as being a basis for immediate termination of this Permit, all of which shall be subject to the sole discretion of the CITY.

12. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area except as otherwise permitted hereunder. 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.
13. Insurance. PERMITTEE shall procure and maintain for the duration of the Permit insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by PERMITTEE, his agents, representatives, employees or subcontractors.

PERMITTEE shall provide, at a minimum, the following:

13.1 Types of Insurance. At all times during the term of this Permit, the PERMITTEE shall maintain insurance coverage as follows:

- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability. For all of the PERMITTEE's automobiles including owned, hired and non-owned automobiles, the PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- c. Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permitted Uses of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
- d. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY

and its respective elected officials, officers, employees, agents and representatives.

- 13.1.2 Self-Insured Retentions. Self-insured retentions must be declared to and approved by CITY. CITY may require PERMITTEE to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or CITY.
- 13.1.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. The CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 13.1.4 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time 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 Permitted Uses.
- 13.1.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permitted Uses. 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.
- 13.1.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Permit.

Commercial General Liability Insurance Endorsements:

- i. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability

arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

- ii. PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.

Workers' Compensation Insurance Endorsements:

- iii. WAIVER OF SUBROGATION. The Workers' Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.
14. Subcontractors' Insurance and Indemnification of CITY. Unless PERMITTEE's insurance covers work performed by all of PERMITTEE's subcontractors working in the Permit Area, PERMITTEE shall require PERMITTEE's subcontractors to indemnify the CITY pursuant to Section 15 herein and to maintain insurance coverage to the same extent PERMITTEE is required to maintain pursuant to Section 13 herein, including all obligations to provide documentation and all of the endorsements as set forth in Section 13.1.6 herein, including naming the City of San Diego and its respective elected officials, officers, employees, agents and representatives as an Additional Insured in each insurance policy.
 15. 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, agents, contractors, 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, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or 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 reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

16. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, 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.
17. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
18. Disabled Access Compliance. PERMITTEE, in the performance of PERMITTEE's work and use of the Permit Area, shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE shall not have any obligation to correct or modify the pre-existing condition of the Permit Area. PERMITTEE's compliance shall include without limitation the following:
 - 18.1 PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
 - 18.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
 - 18.3 PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;

18.4 Where required by law and to the extent caused by PERMITTEE, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons solely as a result of PERMITTEE's acts; and

18.5 PERMITTEE shall include language in each subcontractor agreement, if any, indicating the subcontractors' agreement to abide by the foregoing provisions.

PERMITTEE and each of its subcontractors, if any, shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

19. 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.
20. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permitted Use and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
21. Nuisance and Noise Disturbances. PERMITTEE shall not use the Permit Area in any manner which, in the opinion of the CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
22. No Assignment. PERMITTEE shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the CITY. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.
23. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising in the Permit Area 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 twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
24. Security and Safety in Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of its tools and equipment and for work performed by PERMITTEE in the Permit Area during the Term relating to any work performed as authorized by this

Permit or under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of its tools, equipment and work space within the Permit Area, as appropriate, immediately following each day's work to ensure security and safety of PERMITTEE's tools, equipment and to ensure the PERMITTEE's work space does not create a security or safety concern. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to conducting the Permitted Use in the Permit Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Permitted Uses or staffing or resources for the maintenance of security for PERMITTEE's tools and equipment used in the Permit Area during the Term.

25. 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 the Permitted Use. 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 reasonable 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 entitled to lien or encumber the Permit Area pursuant to the California Civil Code.
26. 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 Permitted Use.
27. Hazardous Materials. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area, other than as may exist at, in, on or under the Permit Area prior to the Effective Date. PERMITTEE shall use reasonable care and diligence in conducting the Permitted Use to avoid the release of any Hazardous Substance in, on, or under 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, other than substances which are commonly used in performing the Permitted Use, provided that such substances are used in conformance with all applicable laws relating to Hazardous Substances. 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. 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. The parties acknowledge that certain mobile homes may contain asbestos containing material ("ACM") and PERMITTEE is not required by this Permit to remove such ACM, or any other Hazardous Substance existing in the Permit Area as of the Effective Date unless PERMITTEE has caused the release of

the ACM or other Hazardous Substances in conducting the Permitted Use. PERMITTEE may test for such ACM, so long as such testing is performed in accordance with applicable laws and regulations.

- 27.1 Release. For all purposes of this Permit, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- 27.2 Hazardous Substance. For all purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 27.3 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 such released Hazardous Substance 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. Notwithstanding the foregoing, PERMITTEE shall not have any liability to CITY for pre-existing conditions, unless exacerbated by PERMITTEE, and then, only to the extent of such exacerbation.
- 27.4 Removal. If PERMITTEE or PERMITTEE's agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE or PERMITTEE's agent shall remove all such Hazardous Substances 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.
- 27.5 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, provided that PERMITTEE shall not have any liability to CITY for pre-existing conditions, unless exacerbated by PERMITTEE, and then, only to the extent of such exacerbation.

- 27.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations 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.
- 27.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area 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 occupancy, use, development, maintenance, or restoration of the Permit Area, and in what quantities. If any such Hazardous Substances released by PERMITTEE were released 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 with respect to such released substances, then the environmental assessment shall include a discussion of such released substances with recommendations for remediation and removal of such released substances 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, then CITY may cause, the remediation and/or removal of such released substances recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved with respect to such released substances, and PERMITTEE shall pay all costs and expenses therefore. Notwithstanding the foregoing, PERMITTEE shall not have any liability to CITY for pre-existing conditions, unless exacerbated by PERMITTEE, and then, only to the extent of such exacerbation.
28. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Permit Area caused directly or indirectly by PERMITTEE's use of the Permit Area, including items that CITY staff has determined to be damaged by PERMITTEE'S use of the Permit Area. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising out of damage caused by PERMITTEE's use of the Permit

Area under this Permit. Notwithstanding anything herein, PERMITTEE shall not be responsible to repair or replace any pre-existing condition at, in or of the Permit Area, unless, and then only to the extent, PERMITTEE causes further damage thereto.

29. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact (as that term is defined below) prior to the Effective Date.
30. Subcontractors. PERMITTEE has and shall provide a list of any and all contractors and subcontractors to CITY Contact, including name, address, email, facsimile and phone number. All construction work requiring a licensed contractor pursuant to the Contractors' State Licensing Laws (California Business & Professions Code sections 7000-7191) shall be done by contractors licensed within the State of California.
31. Storm Water Pollution Prevention Program. PERMITTEE shall comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

PERMITTEE shall comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

PERMITTEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

32. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of the CITY and are grounds, at the CITY's option, for immediate termination of this Permit.
33. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act (CPRA). PERMITTEE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
34. 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.

35. Acceptance of Permit Area. PERMITTEE represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permitted Uses, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property from any defects in the Permit Area or any improvements thereon, and shall be solely responsible therefore.
36. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
37. Termination. CITY may terminate this Permit for any reason upon five (5) days prior written notice delivered to PERMITTEE by CITY; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the Permit, termination may occur upon 24 hours prior written notice. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY by PERMITTEE.
38. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
39. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
40. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
41. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Permit and the Permitted Use. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
42. 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 (referred to herein as the "CITY Contact") or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

TERRA VISTA MANAGEMENT, INC

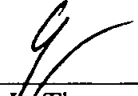
Attention: Jacob Gelfand
2211 Pacific Beach Drive
San Diego, CA 92109
Attn: Gloria Van Zee

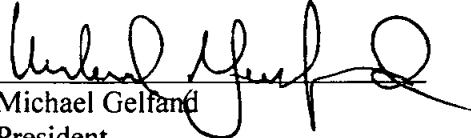
43. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
44. 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 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.
45. Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Permit is subject to State prevailing wage laws. For any construction project performed under this Permit cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Permit cumulatively exceeding \$15,000, PERMITTEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements in Exhibit C, attached hereto

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

THE CITY OF SAN DIEGO,
a California municipal corporation

TERRA VISTA MANAGEMENT, INC

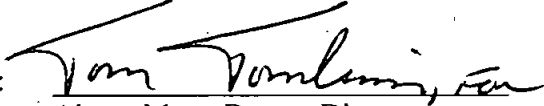
By: 
Cybele V. Thompson
Director, Real Estate Assets Department

By: 
Michael Gelfand
President

Environmental Analysis Section Environmental Clearance :

This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15309 (Inspections).

Date: 8/14/18

By: 
Alyssa Muto, Deputy Director
Environment & Policy Analysis

Approved as to form this 20th day
of August, 2018.

MARA W. ELLIOTT, City Attorney

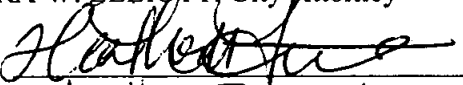
By: 
Name: Heather Ferbert
Title: Deputy City Attorney

Exhibit "A"
Permit Area

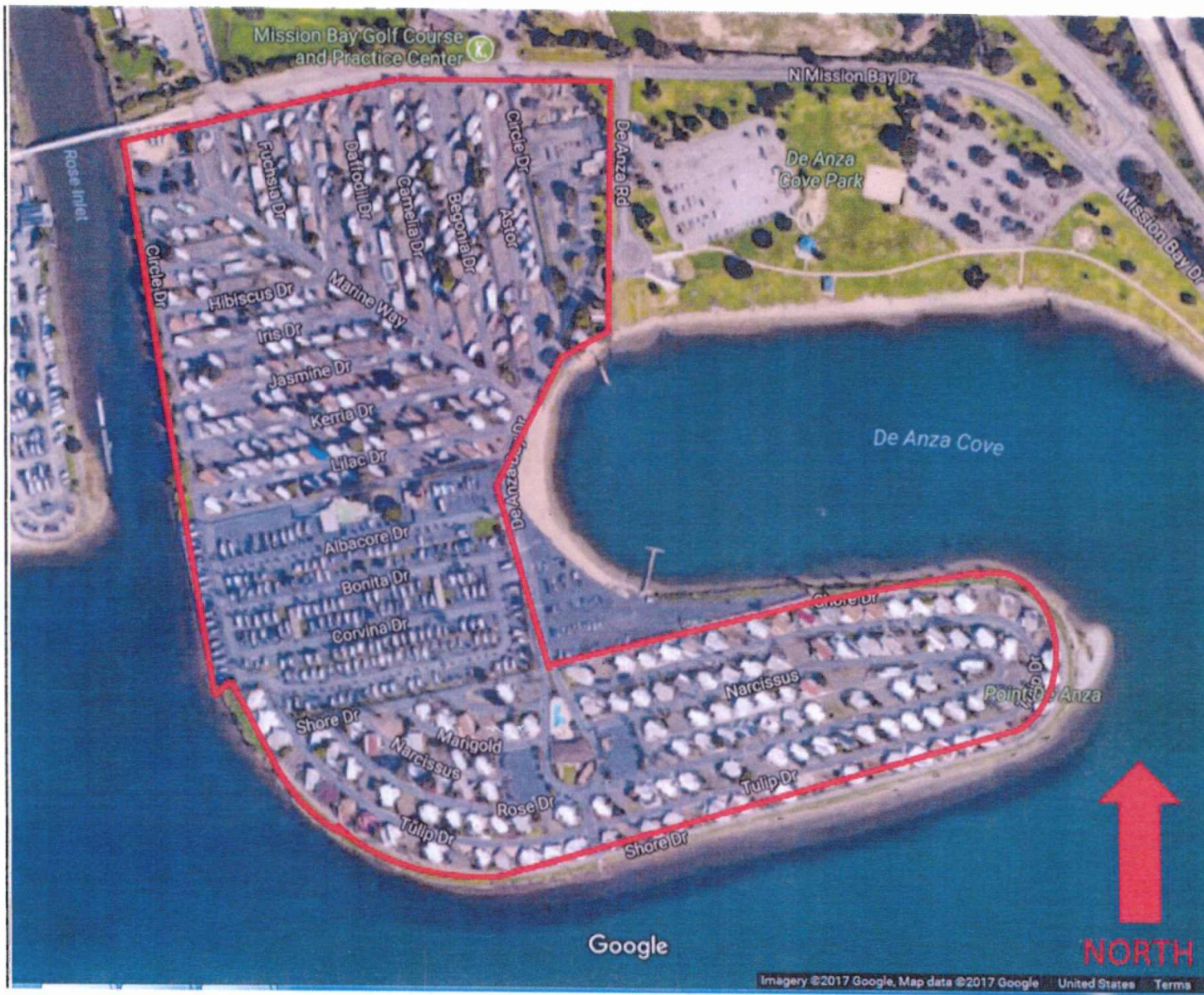


Exhibit "B"

Scope of Work

The Permitted Uses authorized by the Permit consist of the following inspections:

No boring or destructive testing is authorized by this Permit.

Gas System

- Conduct Leak Detection Survey
- Assess Types of Pipe throughout Distribution Mains
- Inspection of Property Cathodic Protection Systems
- Visual Inspections of Gas Meters (Common Areas)
- Visual Inspections of Gas Meters (Lot Spaces)
- Exercise Gas Valves

Sewer

- Camera Property Sewer Distribution Systems
- Inspection of Sewer Manholes/Cleanouts

Storm Drains

- Camera Property Storm Drain Distribution Systems
- Visual Inspection of Storm Drain Grates and Catch Basins

Water

- Leak Detection of Property Distribution Systems
- Back Flow Device's testing
- Fire Hydrant Inspections
- Pressure Regulators Operations Inspection
- Visual Inspections of Common Area, Lot Space, and RV Site Hose Bibs

Irrigation

- Common Area Irrigation System Operations Inspection
- Visual Inspections of Property Manual Irrigation Valves

Electrical

- Visual Inspection of Transformers, Switch Gear, Disconnects, Panels, etc.
- Meg Ohm Property Primary & Secondary Distribution Lines
- Visual Inspection of Lot Space/ RV Site Electrical Pedestals

Cable

- Inspection of Property Cable TV Distribution System

Phone

- Inspection Property Phone Distribution System

Roads and Walkways

- Visual Inspection of Property Roadway Conditions
- Visual Inspection of Property Walkway Conditions
- Visual Inspection of Property Building Entry Walk Conditions
- Visual Inspection of Driveways
- Visual Inspection for raised and/or uneven areas

Common Areas

- Visual Inspection of Property Riprap Areas
- Visual Inspection of Beach Areas
- Visual Inspection of Boat Ramp
- Visual Inspection of Empty Mobile home Lot Spaces
- Visual Inspection Bay Club Clubhouse

Buildings

- Visual Inspections of all Buildings on the property, including but not limited to the Bay Club Clubhouse, Registration/Administration Building, Market Facility (if still present), Maintenance Facilities, RV Clubhouse, Laundry Buildings, etc.
- Exterior and Interior Visual Inspections of remaining Home Units throughout the Property

Pools

- Inspection of Pool & Spa Equipment
- Inspection of Pool & Spa Gunite, Coping Tile, Waterline Tile
- Inspection of Pool & Spa Area Decking
- Inspection of Pool & Spa Area Fencing & Gates
- Inspection of Pool & Spa Area Lighting

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Exhibit C

Prevailing Wage Requirements

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Permit is subject to State prevailing wage laws. For construction work performed under this Permit cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Permit cumulatively exceeding \$15,000, Permittee and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, PERMITTEE, its contractors and subcontractors shall ensure that all workers who perform work under this Permit are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

- 1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. PERMITTEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

- 1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Permit. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Permit in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Permit, each successive predetermined wage rate shall apply to this Permit on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Permit, such wage rate shall apply to the balance of the Permit.

2. **Penalties for Violations.** PERMITTEE and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall

be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. **Payroll Records.** PERMITTEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. PERMITTEE shall require its contractors and subcontractors to also comply with section 1776. PERMITTEE and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. PERMITTEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. PERMITTEE and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
4. **Apprentices.** PERMITTEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. PERMITTEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
5. **Working Hours.** PERMITTEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
6. **Required Provisions for Subcontracts.** PERMITTEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
7. **Labor Code Section 1861 Certification.** PERMITTEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Permit, PERMITTEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
8. **Labor Compliance Program.** The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will instruct PERMITTEE to withhold contract payments pursuant to the agreement between PERMITTEE and PERMITTEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation

by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- 9.1. Intentionally omitted.
- 9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- 9.3. PERMITTEE certifies that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and PERMITTEE shall provide proof of registration for themselves and all listed subcontractors to the CITY at the time of bid or proposal due date or upon request.
10. **Stop Order.** For PERMITTEE or its contractors or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.
11. **List of all Subcontractors.** The CITY may ask PERMITTEE for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Permit at any time during performance of this Permit, and PERMITTEE shall provide the list within ten (10) working days of the CITY's request. Additionally, PERMITTEE shall provide the CITY with a complete list of all subcontractors utilized on this Permit (regardless of tier), within ten working days of the completion of the work authorized by this Permit, along with their DIR registration numbers.
12. **Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. PERMITTEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

- 12.1. **Registration.** PERMITTEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1).
- 12.2. **Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. PERMITTEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).
- 12.3. **List of all Subcontractors.** PERMITTEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

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