

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and HALLOWEEN TYME LLC, a Wisconsin limited liability company, doing business as HALLOWEEN EXPRESS ("PERMITTEE"), to be effective as of September 1, 2019 (the "Effective Date").

RECITALS

- A. CITY is the owner of real property located at 3220 Sports Arena Boulevard, San Diego, California 92110 (the "Property"), and more particularly depicted as Lot A on **Exhibit A: Permit Area**, attached hereto and by this reference incorporated herein (the "Permit Area").
- B. PERMITTEE wishes to enter upon and temporarily use the building and parking lot for a seasonal Halloween pop up costume and decoration store in approximately 12,528 square feet commonly known as 3220 Sports Arena Boulevard, San Diego, California 92110.

NOW THEREFORE, based upon the foregoing 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.
- 2. **Revocable License.** This Permit is not a lease. It is a license to access and temporarily use the Permit Area for the purposes stated herein and may be revoked at will by CITY pursuant to requirements of Paragraph 33, 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 seventy (70) days commencing on September 1, 2019 and expiring on November 10, 2019.
- 4. **Permit Fee.** PERMITTEE shall pay CITY a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980) payable to "City Treasurer".
- 5. **Holdover.** Any hold 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

a month-to-month 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. Rent. PERMITTEE shall pay to CITY in advance a one-time rent ("Rent") payment in the amount of Forty-Two Thousand Dollars and No Cents (\$42,000.00). Rent is based on an appraisal of \$18,000.00 per month or \$600.00 per day. PERMITTEE shall pay the one-time Rent payment in advance at the time PERMITTEE signs the Permit.

7. Time and Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

8. Delinquent Rent. If PERMITTEE fails to pay Rent when due, PERMITTEE shall pay, in addition to the unpaid Rent, five percent (5%) of the delinquent Rent. If the Rent is still unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five percent (5%) (being a total of ten percent [10%]), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of Rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.
9. Use of Permit Area. PERMITTEE may use the Permit Area on a temporary basis for a seasonal Halloween pop up costume and decoration store and parking ("Permitted Uses"). PERMITTEE shall not allow any person to clean vehicles or perform any mechanical work on any vehicles within the Permit Area.
10. 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. 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.

11. 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 Term's commencement, subject to the satisfaction of the City.
12. 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.
13. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Property other than the Permitted Use. Any use of the Property 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 Property and 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.
14. 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.
15. Insurance. PERMITTEE shall not enter or come onto the Property, nor begin any use of the Property under this Agreement until it has done all of the following: (a) obtained, and provided to the CITY, insurance certificates reflecting evidence of all insurance required below, however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the CITY. The PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Agreement.

15.1 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 \$1 million per occurrence and subject to an annual aggregate of \$2 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 Allowed Uses of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to the CITY's Real Estate Assets Department.
- d. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Agreement 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 employer's 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.

15.1.2 Deductibles. All deductibles on any policy shall be the responsibility of the PERMITTEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.

15.1.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit or in the Special General Conditions 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 on 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.

- 15.1.4 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.
- 15.1.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Property 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.
- 15.1.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before entering onto the Property or initiating any of the Permitted Uses 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 Contractor's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall apply separately to each insured against

whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements.

- iv. 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 automobile owned, leased hired or borrowed by or on behalf of the PERMITTEE.
 - v. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
 - vi. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY 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.
16. Indemnification & Hold Harmless. Lessee will protect, defend, indemnify, and hold City and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Lessee's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or Lessee's occupancy, use, development, maintenance, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that Lessee's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or willful misconduct of City and its elected officials, officers, employees, representatives, and agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Lessee will pay the City for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.
17. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which will run with the land, that Lessee or any person claiming under or through Lessee will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity,

gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

18. 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.
19. 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.
20. 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).
21. 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.
22. 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.
23. Security and Safety of Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area. 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 maintaining the Permit Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Project or staffing or resources for the maintenance of the Permit Area during the Term.
24. 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 referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

25. 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.
26. 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. 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. 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.
 - 26.1 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.
 - 26.2 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.
 - 26.3 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 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.
 - 26.4 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 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.

- 26.5 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.
- 26.6 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.
- 26.7 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 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, then 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 laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefore.

27. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Property caused directly or indirectly by PERMITTEE's use of the Property, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.
28. Water Quality – Best Management Practices. City and Lessee are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is Lessee's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, Lessee will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately Lessee's responsibility to prevent pollutant discharges to the storm drain system. Therefore, Lessee will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

29. 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.
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 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.
31. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area. PERMITTEE further 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.

32. 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.
33. Termination. CITY may terminate this Permit for any reason upon thirty (30) 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.
34. 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.
35. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
36. 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.
37. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

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

HALLOWEEN TYME LLC dba Halloween Express
Attention: Matthew Fahr
784 Avenida Codorniz
San Marcos, CA 92069

38. 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.

[Remainder of page intentionally left blank.]

39. 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.

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

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____

Cybele L. Thompson
Director, Real Estate Assets

HALLOWEEN TYME LLC,
a Wisconsin limited liability company

By: _____

Matthew Fahr
Member

Environmental Analysis Section Environmental Clearance:

*This activity is categorically exempt from CEQA pursuant to
State CEQA Guidelines Section 15301 (Existing Facilities).*

Date: _____

9/3/19

By: _____

Alyssa Muto, Deputy Director
Environment & Policy Analysis

Approved as to form this 4th day
of September, 2019.

MARA W. ELLIOTT, City Attorney

By: _____

Name: Melissa Ables

Title: Deputy City Attorney

I:\READ\FARST\HALLOWEEN TYME\HALLOWEEN TYME LLC UOP 7.22.19

Exhibit A: Permit Area

