

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT
[City Heights Business Association – University and 40th]

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"), as lessor, and **City Heights Business Association, a California non-profit 501(C)(6) corporation** ("PERMITTEE"), to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

A. City owns unimproved land that is not being utilized by a City department. The community would like to put the property to good use for the benefit of the public.

B. City Heights Business Association is interested in utilizing the property on a temporary basis for a public gathering place, and is willing to maintain the property and provide fencing at their own costs.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:
 - a. **"Permit Area"** shall mean all of that certain real property consisting of approximately 0.27 acres of unimproved land located at the southwest corner of University Avenue and 40th Street, Assessor's Parcel Number 447-491-31, and as more particularly depicted in **Exhibit A: Permit Area**, attached hereto (the "Permit Area").
 - b. **"Permit Use"** shall mean the non-exclusive use of the Permit Area solely and exclusively as a temporary public gathering place to host outdoor community activities and events, and for no other purpose whatsoever without CITY's prior written consent in each instance. It is the intent of the parties that this Permit shall in no way be construed to allow permanent infrastructure or improvements on, in, or under the Permit Area. PERMITTEE shall, at all times, be responsible for maintaining the Permit Area in a clean and safe condition.
 - c. **"PERMITTEE's Address for Notices"** shall be:

Enrique Gandarilla, MPA
Executive Director
City Heights Business Association
4305 University Avenue, Suite 520
San Diego, CA 92105
(619) 906-4443

- d. **“Security Deposit”** shall mean an amount equal to One Thousand Dollars (\$1,000).
2. **Use of Permit Area.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents and contractors to enter upon and use the Permit Area solely for the purpose of the Permit Use.
 - a. PERMITTEE shall not allow any person to store or clean vehicles, perform any mechanical work on any vehicles, or fuel or refuel any vehicles within the Permit Area.
 - b. **Political Activities.** PERMITTEE shall not use the Permit Area to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan; however, PERMITTEE may allow use of the Permit Area as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.
 - c. PERMITTEE shall notify CITY in writing, at least thirty (30) days prior to any events to be held on the Permit Area by the PERMITTEE.
 - d. Notwithstanding any provisions to this Permit to the contrary, CITY has the right to enter and use the Permit Area as CITY reasonable deems necessary.
3. **Revocable License.** This Permit is not a lease. It is a non-exclusive license to use CITY-owned property, and may be revoked at will by CITY upon thirty (30) days written notice.
4. **Lock/Keys Used to Access Permit Area.** PERMITTEE will provide and install a lock on the existing fence at the entrance to the Permit Area from 40th Street. PERMITTEE shall also install locks on all gates associated with the perimeter fence for the Permit Area. PERMITTEE shall provide CITY with a copy of the key(s) necessary to unlock any lock installed, so that CITY can access the Permit Area if necessary.
5. **Noise.** PERMITTEE must comply with CITY’s Noise Abatement and Control Ordinance (San Diego Municipal Code section 59.5.0101 *et seq.*, as may be amended from time to time).
6. **Governmental Approvals.** **PERMITTEE represents that it has made its own investigation with the CITY’s Development Services Department to ensure the Permit Use complies with applicable zoning and all other applicable City development regulations.** By entering into this Permit, neither CITY nor the 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 or improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

- a. **PERMITTEE shall, at its sole cost and expense, obtain any type of license or permit necessary in order to lawfully engage or host any specific type of public gathering. By granting this Permit, CITY is not approving any specific type of public gathering or event to be held by PERMITTEE on the Permit Area, and this Permit shall not be interpreted by any decision-maker on any CITY-issued (or any other governmental agent, board, commission or agency issued) permit or approval to override or dictate the outcome of any findings required for any permit, license, or development approval.**
 - b. PERMITTEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any improvement or particular use of the Permit Area or any aspect thereof.
7. CITY's Consent, Approval. CITY's consent or approval under this Permit 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 required by law or expressly provided herein.
 8. Term. The term of this Permit ("Term") shall be on a month-to-month basis for a period not to exceed three (3) years from the Effective Date of this Permit.
 9. 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. PERMITTEE's occupancy of the Permit Area after the expiration or earlier termination of this Permit shall constitute a month-to-month license terminable at will, and all other terms and conditions of this Permit shall continue in full force and effect.
 10. Surrender of Permit Area. Upon the expiration or earlier termination of this Permit, PERMITTEE shall vacate the Permit Area and surrender them to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY.
 11. Monthly Rent. Monthly Rent shall be waived, provided that the PERMITTEE continues to maintain the perimeter fencing as required by this Permit and maintains the Permit Area in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY, at PERMITTEE's sole cost and expense as required by this Permit.
 12. Processing Fee. Processing Fee is hereby waived as the Permit Use benefits the CITY.

13. 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 Permit Area, 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, relative to any such superior interest.
14. 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 PERMITTEE's use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE's failure, or the failure of any contractor or subcontractor hired by PERMITTEE, to pay any person or persons entitled to lien or encumber the Permit Area pursuant to California Civil Code.
15. Assignment and Subletting. **PERMITTEE shall not assign this Permit or any interest in this Permit, and shall not sublet the Permit Area or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of PERMITTEE, to use or occupy the Permit Area, or any part thereof, without CITY's written consent in each instance.** Neither this Permit nor any interest in it shall be assignable, as to PERMITTEE's interest, by operation of law, without CITY's written consent in each instance.
16. Abandonment by PERMITTEE. If PERMITTEE abandons the Permit Area, this Permit shall continue in effect as long as CITY does not terminate this Permit, and CITY may enforce all of its rights and remedies under this Permit, including without limitation the right to recover rent as it becomes due, plus damages.
17. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. 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. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default, or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. CITY's failure to discover a default or take prompt action to require the cure of any default, shall not result in an equitable estoppel, but CITY may at any and all times, have the legal right to require the cure of any default.

18. Termination. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY at CITY's address for notices as set forth herein, below.
19. Restore and Vacate. Except as otherwise provided in this Permit, prior to the expiration of this Permit or upon PERMITTEE's earlier termination of this Permit, PERMITTEE shall restore the Permit Area to the same or similar condition that existed on the Effective Date, and as otherwise required by environmental impact reports, and to CITY's satisfaction, normal wear and tear excepted for authorized Permit Uses, and upon such expiration or earlier termination immediately vacate the Permit Area. Upon CITY's earlier termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable (see below Section 25 Improvements and Personal Property for applicable timelines for removal of PERMITTEE Improvements) restore the Permit Area to the same or similar condition that existed on the Effective Date normal wear and tear excepted, and vacate the Permit Area.
20. Indemnification & Hold Harmless. PERMITTEE shall 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 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 granting of this Permit, or PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents.
21. Insurance. PERMITTEE shall obtain and maintain throughout the Term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. PERMITTEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which shall be subject to CITY's written approval thereof:
 - a. Commercial General Liability Insurance ("CGL") 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, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). 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 Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single 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.
- c. Workers' Compensation Insurance, as required by applicable laws, 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), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- d. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Permit Area.
- e. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- f. Severability of Interest. Each policy 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.
- g. Qualified Insurer(s). 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 CITY. CITY may 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 (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- h. 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.
- i. 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 and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- j. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, 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 Permit Use.
- k. 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 Permit Use. 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.
- l. 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 Permit Use 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.

22. Acceptance of Permit Area. PERMITTEE acknowledges that the Permit Area is in good order and condition and shall take possession of the Permit Area "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Permit Area for PERMITTEE's intended use, and assumes no obligation to alter or improve the Permit Area. PERMITTEE has relied solely on its own independent investigations of the condition and suitability of the Permit Area, and is satisfied with the condition thereof. PERMITTEE further acknowledges that the Permit Area is in the condition called for by this Permit and that PERMITTEE does not hold CITY responsible for any defects, whether apparent or latent, in the Permit Area, including the presence of any Hazardous Substances as defined in this Permit.
23. Improvements/Alterations. PERMITTEE may utilize temporary removable landscaping in pots and/or planters, temporary removable seating, portable shading, and a temporary removable performance area, as necessary for community gatherings and events. PERMITTEE shall not install or construct any permanent improvements, structures or installations on the Permit Area, and the Permit Area may not be altered, by PERMITTEE without CITY's written approval. If PERMITTEE obtains said written consent of CITY, PERMITTEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Permit Area without CITY's written approval. This provision shall not relieve PERMITTEE of any maintenance obligation under this Permit. All contractors and subcontractors conducting any improvements on the Permit Area shall be licensed and duly bonded. CITY shall not be obligated by this Permit to make or assume any expense for any improvements or alterations to the Permit Area.
- a. Fence. PERMITTEE shall at its sole cost and expense, maintain the existing fence surrounding the perimeter of the Permit Area (the "Perimeter Fence") or PERMITTEE, at PERMITTEE's sole cost and expense shall have a new fence installed around the Permit Area of similar or better quality than the Perimeter Fence, subject to CITY approval, which approval shall be in CITY's sole discretion.
24. Liens. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Permit Area and the costs of defending against such claims, including without limitation reasonable attorney fees. If PERMITTEE causes improvements, alterations or repairs to be made to the Permit Area, and a lien or notice of lien is filed against the Permit Area, PERMITTEE shall notify CITY of the lien within five (5) days after PERMITTEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

25. Ownership of Improvements and Personal Property. CITY shall not own any improvements, fixtures, structures or installations on the Permit Area during the Term. Upon expiration or termination of this Permit, all improvements, fixtures, structures and installations on the Permit Area shall be removed by PERMITTEE, except for the Perimeter Fence, which CITY may, in its sole discretion allow to remain. If CITY allows the Perimeter Fence to remain, CITY shall become the owner of the fence, free any encumbrances and liens thereon upon the expiration or earlier termination of the Permit. CITY shall notify PERMITTEE in writing if CITY does not wish to take ownership of the Perimeter Fence and requires that it be removed. If the CITY requires removal of the Perimeter Fence, PERMITTEE shall remove the Perimeter Fence, at its sole costs and expense, as soon as practicable after the expiration or earlier termination of the Permit, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE shall restore the Permit Area to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If PERMITTEE fails to remove the items as required in this section, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.
- a. Personal Property. PERMITTEE shall remove PERMITTEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination of this Permit. Any such items which PERMITTEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.
26. Waste, Damage, or Destruction. PERMITTEE shall not commit or allow to be committed any waste or any public or private nuisance on the Permit Area, shall keep the Permit Area clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Permit Area are put into a condition which is not decent, safe, healthy and sanitary, PERMITTEE shall restore the Permit Area to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.
27. Entry and Inspection. CITY may at all times enter and inspect the Permit Area, but is not obligated to do so.
28. Maintenance. PERMITTEE shall at its sole costs and expense maintain the Permit Area and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Permit Area.

29. Utilities. PERMITTEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Permit Area. All utilities shall be installed underground.
30. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Permit Area or upon PERMITTEE's use and occupancy of the Permit Area, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by PERMITTEE thereon. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation and that PERMITTEE may be subject to the payment of taxes levied on that possessory interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from PERMITTEE's possession, use or occupancy of the Permit Area.
31. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances 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 written consent. PERMITTEE shall obtain and maintain all required licenses and 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.
- a. Definitions. 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, gaseous material, or waste 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.
- b. 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 competent governmental authority

- 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 Substances onto the Permit Area, PERMITTEE shall remove, or cause to be removed, all such Hazardous Substances 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 Substances from the Permit Area. PERMITTEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Permit Area.
- 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.
32. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per 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.
33. 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 laws, rules and regulations of competent governmental authority, 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, rules and regulations, 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 the laws, rules and regulations of competent governmental authority is achieved, and PERMITTEE shall pay all costs and expenses therefor.

34. 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 Postal Service, postage prepaid and addressed as follows:

If to PERMITTEE:

Enrique Gandarilla, MPA
Executive Director
City Heights Business Association
4305 University Avenue, Suite 520
San Diego, CA 92105
(619) 906-4443

If to CITY:

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

35. Compliance with Law. PERMITTEE shall at all times in the occupancy, use, development, maintenance or restoration of the Permit Area comply with all applicable laws, rules and regulations of competent legal authority, at PERMITTEE's sole cost and expense. PERMITTEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspection of PERMITTEE fire-suppression equipment).
36. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act. PERMITTEE shall hold CITY, its elected officials, officers and employees harmless

for CITY's disclosure of any such information in response to a request for information under the California Public Records Act.

37. 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 laws, rules and regulations of competent governmental authority. 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 commercial sublicenses and all contracts for any work covered by this Permit so that such provisions will be binding upon each sublicenses and contractor. PERMITTEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [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.
38. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require PERMITTEEs of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the Term. PERMITTEE's failure to maintain equal benefits shall be a default of this Permit.
39. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable local, state, and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:
 - a. 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.
 - b. 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.
 - c. PERMITTEE shall include language in each sublicense agreement which indicates the sublicense's agreement to abide by the foregoing provisions of this

section. PERMITTEE and each of its sublicenses shall be individually responsible for their own ADA employment programs.

- d. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- e. Where required by law, all improvements, fixtures, structures or installations on the Permit Area shall comply all applicable building codes and accessibility regulations by bringing up to code and making accessible any areas of the Permit Area which deny access to disabled persons. All improvements and alterations shall be at PERMITTEE's sole cost and expense.

PERMITTEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Permit.

- 40. Drug-free Workplace. PERMITTEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace;
 - 2) PERMITTEE's policy of maintaining a drug-free workplace;
 - 3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4) The penalties that may be imposed upon employees for drug abuse.
- 41. PERMITTEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. PERMITTEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
- 42. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City

of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.

43. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
44. 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, Permitted, 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.

45. Nondiscrimination. This Permit is made and accepted upon and subject to the covenant and condition, which shall run with the land, that PERMITTEE or any person claiming under or through PERMITTEE shall 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 and occupancy of the Permit Area or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Permit Area.
46. Unavoidable Delay. If the performance of an act required by this Permit is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay Rent. The party claiming a delay shall notify the other party in

writing within ten (10) days after the beginning of any claimed delay.

47. 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.
48. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
49. 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.
50. 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.
51. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
52. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE's occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto.
53. Partial Invalidity. If any term, covenant, condition or provision of this Permit is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

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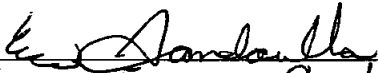
54. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions 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 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.

City Heights Business Association, a
California non-profit 501(C)(6) corporation

Date: _____

BY: _____

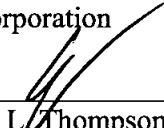

Name: Enrique Gandarilla
Title: Executive Director

Date: _____

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 12/13/17

BY: _____


Cybele L. Thompson
Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Sections 15301 and 15304 (e).

Date: _____

BY: _____

Name: _____
Title: _____

Approved as to form:

MARA W. ELLIOTT, CITY ATTORNEY

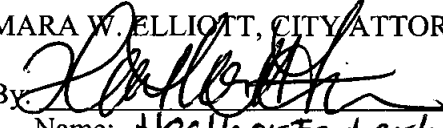
BY: 
Name: Heather Ferbert
Title: Deputy City Attorney
Date: 1-5-2018

Exhibit A: Permit Area

54. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are 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 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.

City Heights Business Association, a
California non-profit 501(C)(6) corporation

Date: _____

BY: _____
Name: _____
Title: _____

Date: _____

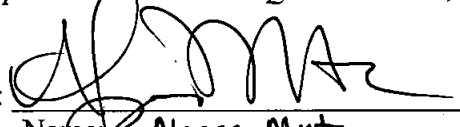
THE CITY OF SAN DIEGO, a California
municipal corporation

Date: _____

BY: _____
Cybele L. Thompson
Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines,
Sections 15301 and 15304 (e).

Date: 1/3/18

BY: 
Name: Alyssa Muto
Title: Deputy Director, Planning Dept.

Approved as to form:

MARA W. ELLIOTT, CITY ATTORNEY

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A: Permit Area

Exhibit A: Permit Area

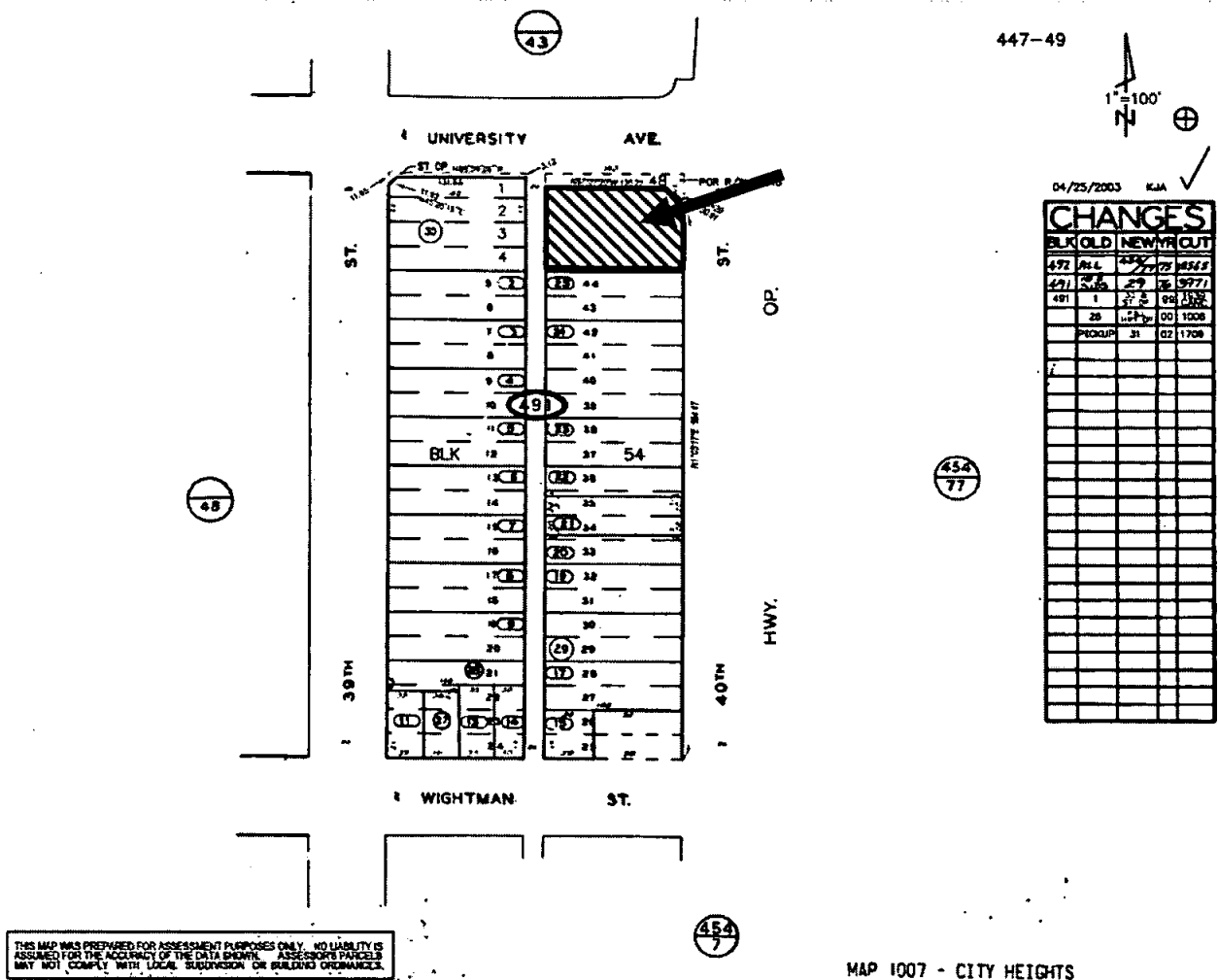


Exhibit A: Permit Area

