

**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and the DOWNTOWN SAN DIEGO PARTNERSHIP, ("Permittee").

1. Grant. City hereby grants permission to Permittee to enter upon City-owned property located at 1245 Caminito Centro, San Diego, California 92102, APN 534-12-028 a portion of the parking area and fenced section. This portion consists of approximately 8,952 square feet, and as specifically set forth on the attached Exhibit "A" ("Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.
2. Use of Permit Area. Permittee shall have non-exclusive use of the Permit Area for temporary parking of vehicles, placement of three container storage bins, two trash bins, and two mobile trailers. Permittee shall also have the non-exclusive right for ingress and egress to Permit Area.
3. Permit Fee. Consideration to City for granting this Permit shall be \$600.00 non-refundable processing fee and a \$1,790.40 monthly permit fee commencing on November 21, 2005. Permit fees should be made by check payable to the City Treasurer and mailed to the Office of the City Treasurer, P. O. Box 122289, San Diego, California 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California 92101, on or before the first day of commencement. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month.
4. Permit Fee Adjustment. Beginning with the second year of this Permit and continuing each year thereafter, the Permit fee shall be increased annually as of the commencement date. The monthly increase shall be five percent (5%) of the preceding year's monthly permit fee.
5. Delinquent Rent. If Permittee fails to pay the permit fee when due, Permittee will pay, in addition to the unpaid permit fees, five percent (5%) of the delinquent permit fee. If the permit fee is still unpaid at the end of fifteen (15) days, Permittee shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is mutually agreed by the parties to be appropriate to compensate City for loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of permit fees be less than twenty-five dollars (\$25).
6. Effective Date. This Permit shall be in effect on November 21, 2005, upon execution by City and Permittee and approval of the City Attorney, and shall expire on October 31, 2008. This

permit may be cancelled by either party on 30 days written notice.

7. Deposit. Permittee shall file with the City Real Estate Assets Department a deposit of \$1,790.40 equal to first month's permit fee to assure that, upon expiration or earlier termination of this Permit, Permittee shall at its sole cost remove all materials and repair and/or restore the Permit Area to its original condition, including any hazardous or toxic waste remediation, to the satisfaction of the City Manager.
8. Insurance. Permittee shall take out and maintain at all times during the term of this Permit, the following insurance at its sole expense:
 - a. Public Liability and Property Damage. Public liability and property damage insurance in the amount of not less than one million dollars (\$1,000,000) combined single limit liability with an occurrence claims form. This policy shall cover all injury or damage, including death suffered by any party or parties from acts or failures to act by City or Permittee or by authorized representatives of City or Permittee on or in connection with the use or operation of the Permit Area.
 - b. Fire, Extended Coverage, and Vandalism. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Permit Area in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to City and Permittee. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.

Permittee's responsibility to maintain the insurance also includes the following:

- c. Additional Insured. All insurance policies, by separate endorsement, shall name the City, its elected officials, officers, representatives, agents, and employees as additional insured, protect City against any legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to City.
- d. Evidence of Insurance. All insurance companies must be satisfactory to City and licensed to do business in California. All policies shall be in effect on or before the Effective Date. A copy of the insurance policy or certificate of insurance shall be furnished to City prior to the Effective Date and shall remain on file with City during the entire term of this permit. At least thirty (30) days prior to the expiration of each policy, Permittee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Permit.
- e. Modification. City, at its discretion, may require the revision of amounts and coverage at any time during the term by giving Permittee sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Permit Area. Permittee shall obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Permit.

- f. Accident Reports. Permittee shall report to City any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Permit Area. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- g. Failure to Comply. If Permittee fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, City has the right to obtain the insurance. Permittee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. The reimbursement and interest shall be paid by Permittee the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Section 8, if Permittee fails or refuses to take out or maintain insurance as required in this Permit or fails to provide the proof of insurance, City has the right to declare this Permit in default without further notice to Permittee and City shall be entitled to revoke this Permit.

- 9. Hold Harmless. Permittee agrees to defend, indemnify, protect, 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 employees, invitees, guests, agents or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of City, its elected officials, officers, representatives, agents, and employees.
- 10. No Discrimination. Permittee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 11. Permittee's Risk. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder or in the vicinity thereof which results from Permittee's use, shall be borne in full by Permittee.
- 12. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.

13. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. It is mutually agreed that City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this Permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this Permit. City shall have and maintain the right at all times to enter upon the Permit Area in City's sole discretion.
14. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.
15. Compliance with Laws. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area.
16. Hazardous/Toxic Waste. Permittee shall not allow the release of hazardous substances in, on, under or from the Permit Area. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping or otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance which is caused by Permittee's activities, Permittee shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

Permittee agrees to assume the defense of, indemnify and hold City harmless from any and claims, costs and expenses related to environmental liabilities resulting from Permittee's operations on the Permit Area, including, but not limited to costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If Permittee knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, Permittee shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however if Permittee knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Permittee shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all acts

necessary to alleviate such danger. Permittee will notify the City Manager immediately of any notice of violation received or initiation of environmental action or private suits relative to the Permit Area. In addition, Permittee shall not utilize or sell any hazardous substance on the Permit Area without the prior written consent of City.

17. No Assignment. Permittee shall not assign any rights granted by this Permit or any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
18. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
19. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorney fees), which may be filed or instituted against the Permit Area (including without limitation Permittee's failure or the failure of any contractor or subcontractor hired by Permittee) to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections.
20. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy, and sanitary condition at all times during the entire term of this Permit to the satisfaction of the City Manager or designee. Permit Area to be kept free of trash, debris, and periodically swept.
21. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force and effect.
22. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.
23. Inspection. City may enter and inspect the operations permitted under this Permit at any time.
24. Legal Proceedings. Should it become necessary for City to commence legal proceedings to collect any payments due hereunder or to enforce any other condition of this Permit, Permittee agrees to pay all legal costs in connection therewith, including reasonable attorney fees.
25. Notices.

Notices to City shall be mailed to:

City of San Diego
Real Estate Assets Department
Attention: Deputy Director, Asset Management and Marketing Division
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

Notices to Permittee shall be mailed to:

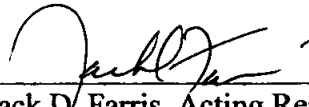
Downtown San Diego Partnership
1111 Sixth Avenue Suite 101
San Diego, CA 92101

26. Governmental Approvals. By the granting of this Permit, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission or agency with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

IN WITNESS WHEREOF, this Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officers.

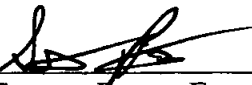
THE CITY OF SAN DIEGO, a municipal corporation

Date: 11/18/05

By: 
Jack D. Farris, Acting Real Estate Assets Director

DOWNTOWN SAN DIEGO PARTNERSHIP

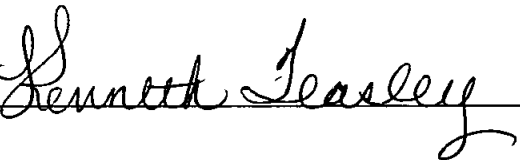
Date: 11/16/05

By: 
Stewart Payne, Executive Director, Clean & Safe

This activity is not a "project" and therefore exempt from State CEQA Guidelines pursuant to Section 15061(b)(3).

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 11/21/05

By: 

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date: 11/21/05

By: 
Deputy City Attorney

CRG/cj
11/15/05
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EXHIBIT "A" – PERMIT AREA

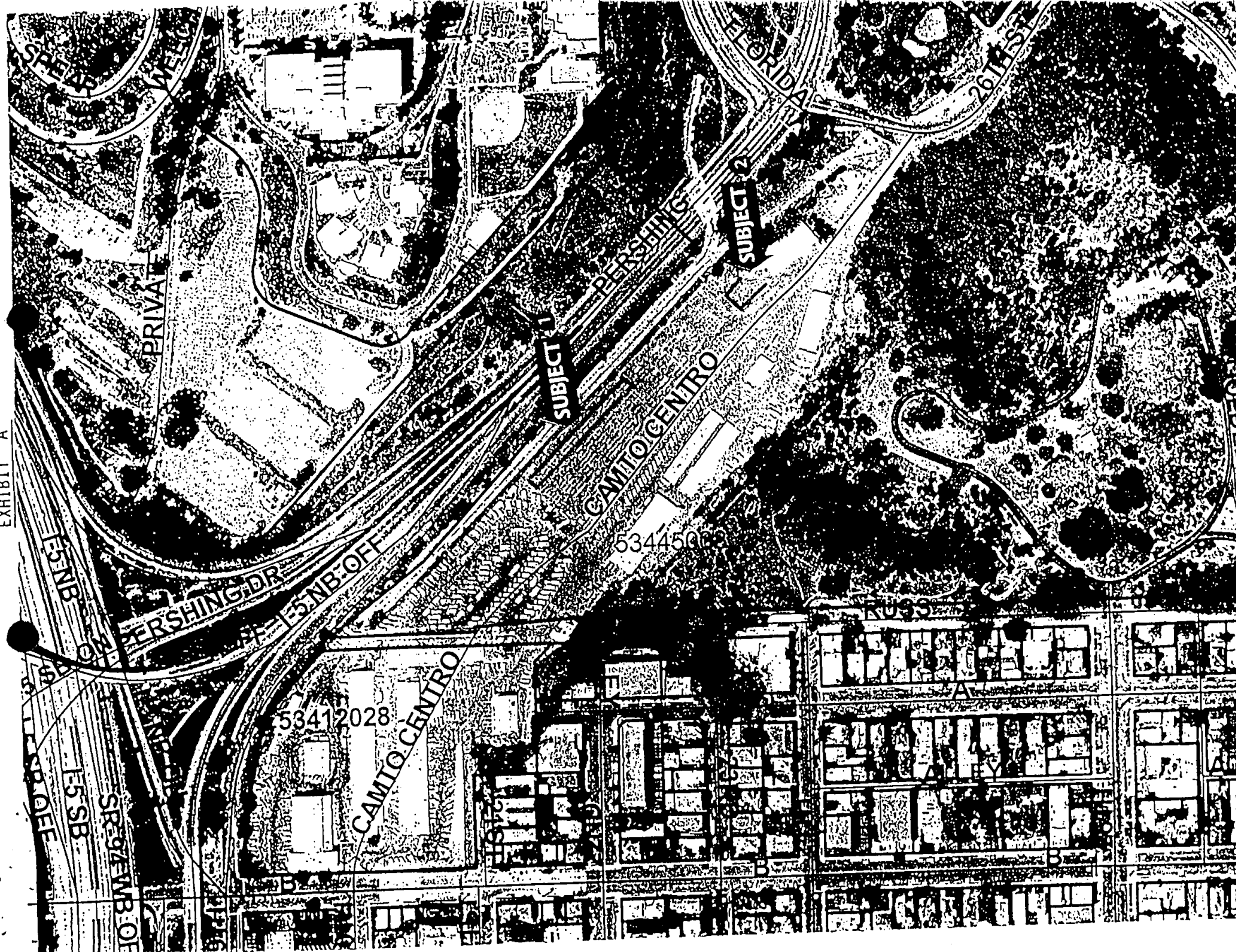
Subject 1.

Two rows of parking spaces in the middle section of the parking area in the City vehicle lot in front of Building 42 (the two rows farthest away from Building 42 on the westerly side) approximately 82' x 86'.

Subject 2.

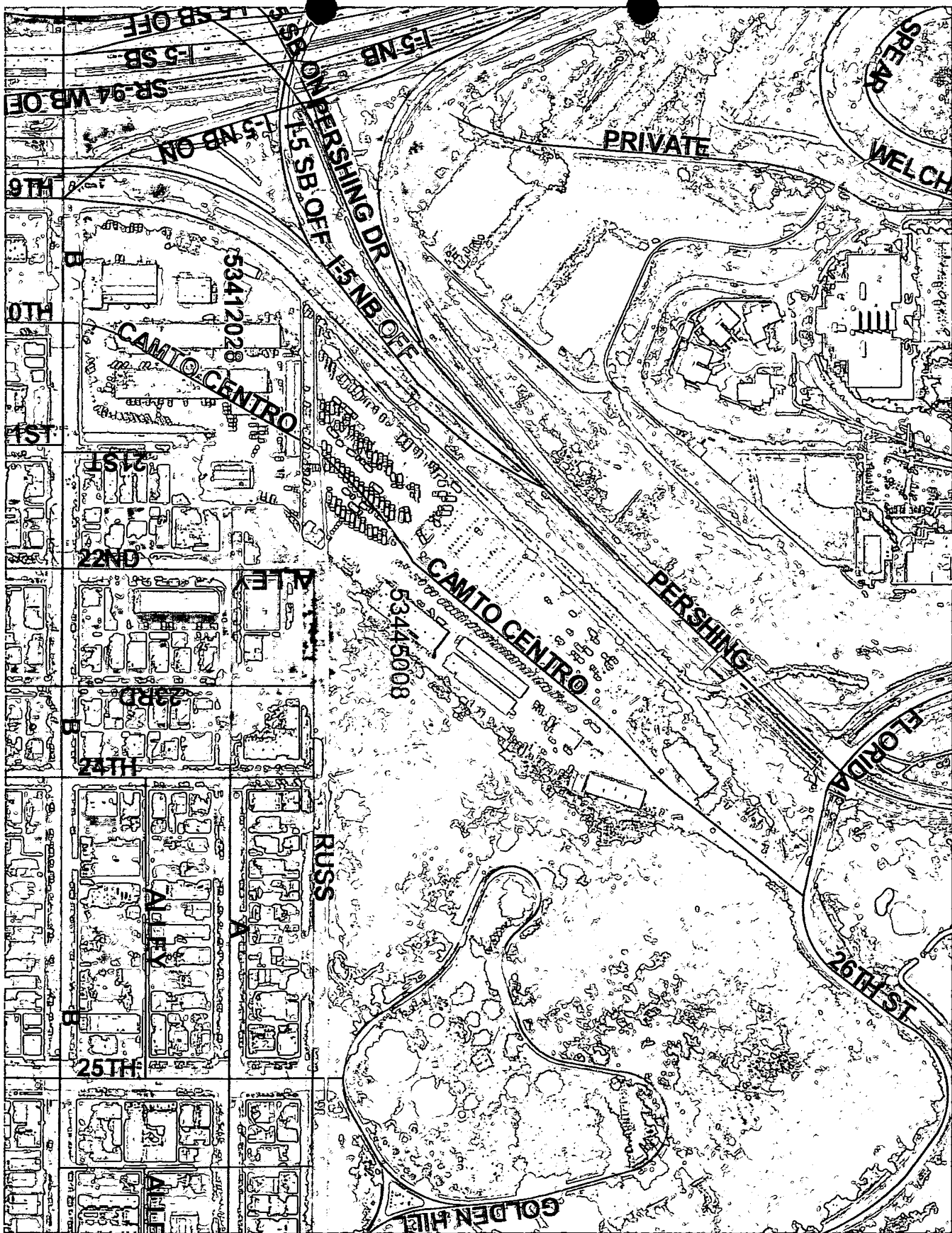
Approximately 50' x 38' across the southerly edge within the fenced area, against the east fence for the trailers and storage containers.

EXHIBIT "A"



53445063

53412028



R402RD

L-5 NB ON

L-5 NB OFF
PERS

**HB OFF
PERSHING**

R402G2

R402RD

PERSHING DR

53412028

R402GM

8 CAMTO CENTRO R4

R402GM

SR-94 W/B OFF

19TH

2011

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