

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 **CHOLLAS LAKE PARK FLYERS**, also known as **CHOLLAS R/C FLYERS**, a not-for-profit association ("PERMITTEE"), to be effective as of October 1, 2013 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

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 or part of that certain CITY-owned property commonly known as Chollas Park/South Chollas Landfill and located at 5997 College Grove Drive, San Diego, 92115. The Permit Area is specifically set forth in **Exhibit A: Permit Area**, attached hereto.
 - b. **"Permit Use"** shall mean the non-exclusive use of the Permit Area solely to fly radio-controlled aircraft (the "Flight Activity") on the Permit Area.
 - c. **"PERMITTEE'S Address for Notices"** shall be: Chollas Lake Park Flyers
ATTENTION: Harley Davis
6205 Streamview Drive
San Diego, CA 92115
 - d. **"Term"** shall mean three (3) years, commencing on the Effective Date. If the Effective Date is not the first day of a calendar month, the first, partial month shall be counted as a full month for purposes of determining the expiration date of this Permit, so that the Term shall expire on the last day of a calendar month.
2. **Occupancy.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
3. **Use of Permit Area.** PERMITTEE and its members may use the Permit Area solely for the Permit Use and for the sole purpose of conducting the Flight Activity. PERMITTEE shall ensure that each participant in the Flight Activity is either a member of PERMITTEE'S association or the Academy of Model Aeronautics ("AMA"). PERMITTEE shall also ensure that each participant in the Flight Activity complies at all times with the AMA Safety Code and PERMITTEE'S rules and regulations. PERMITTEE shall not allow any person to participate in the Flight Activity without having signed and delivered to PERMITTEE a "City of San Diego Waiver of Liability, Assumption of Risk, and Indemnity Agreement", substantially in the form attached hereto as **Exhibit B: Waiver**. At the conclusion of each Flight Activity, PERMITTEE shall clear all trash and debris

resulting from the Flight Activity. PERMITTEE shall continuously occupy and use the Permit Area throughout the Term.

- a. Quarterly Reporting. PERMITTEE shall provide a written report on a quarterly basis to the Park and Recreation Director or Designee, summarizing any and all issues that may have occurred during each quarterly period concerning PERMITTEE'S operations, programming, attendance or complaints from the public.
4. Rent. PERMITTEE shall pay to CITY Rent in the amount of Three Thousand Three Hundred Twenty Dollars (\$3,320.00) per Lease year, payable in two (2) semi-annual installments of One Thousand Six Hundred Sixty dollars (\$1,660.00) each. PERMITTEE shall pay the first semi-annual installment of rent for the first Lease year within thirty (30) days after the Effective Date, with the second installment due six (6) months later, and thereafter on each anniversary of the Effective Date, on a semi-annual basis. The rent shall be adjusted annually, upward only, based on increases in the Consumer Price Index (CPI) as provided below.
 - a. CPI Adjustments. On each anniversary of the Effective Date, the rent shall be adjusted, upward only, to reflect any increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/ Riverside/Orange County, California (the "CPI") based on the average of the then three most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.
 - i. If a rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
 - ii. If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.
 - iii. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.
 - b. CPI Adjustment Computation. The rent shall be calculated as follows:

The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below:

The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars (\$2,500).

Example Calculation

$$\begin{array}{r} \text{Current Index (Third Quarter 2012)} \quad 237.034 \\ \div \\ \text{Base Index (Third Quarter 2001)} \quad 178.5= \\ \text{Adjustment Multiplier} \quad 1.328 \end{array}$$

The base figure is then multiplied by the adjustment multiplier to determine the new rent. Using the foregoing example, the adjusted rent is calculated as follows:

$$\begin{array}{r} \$2,500.00 \quad (\text{Base Figure}) \\ \times 1.328 \quad (\text{Adjustment Multiplier}) \\ \hline \$3,320.00 \quad (\text{Adjusted Rent}) \end{array}$$

$$(\text{CURRENT INDEX} \div \text{BASE INDEX}) \times \text{BASE FIGURE} = \text{NEW RENT AMOUNT}$$

5. 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.
6. 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 or her designee ("Mayor"), unless otherwise expressly provided or required by law. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
7. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation 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.
8. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If

PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area calculated on a per diem basis using up to three (3) times the fair market rental rate to be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by a qualified appraiser selected by CITY in its sole discretion. CITY'S acceptance of such rent shall neither constitute a renewal or extension of the license, nor give PERMITTEE any rights in or to the Permit Area.

9. Termination. Either party may terminate this Permit for any reason upon thirty (30) days prior written notice.
10. Restoration of Permit Area. Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted.
11. 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. 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.
12. Monthly Rent for Non-Permitted Use. PERMITTEE shall pay CITY One Hundred percent (100%) of the Gross Income from any use of the Permit Area that is not allowed by this Permit, regardless of any related penalties charged PERMITTEE by competent governmental authorities. "**Gross Income**" shall mean all income derived by PERMITTEE resulting from occupancy of the Premises from whatever source derived, whether received or to become due. Such unauthorized use charge shall be payable to CITY within thirty (30) days after PERMITTEE receives such Gross Income. No unauthorized use charges shall satisfy or credit against any other rent obligations of PERMITTEE under this Permit. The unauthorized use charge shall otherwise be considered "rent" under this Permit, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Permit.
13. Place of Payment. All amounts due under this Permit shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 129030
San Diego, CA 92112-9030

14. Delinquent Payments. Amounts due CITY under this Permit and not paid when due will be referred to the San Diego City Treasurer for collection, and PERMITTEE shall pay to CITY a collection-referral fee in the amount of ten percent (10%) of the unpaid amount or Twenty-Five Dollars (\$25), whichever is greater, plus interest on the unpaid amount at the rate of twelve percent (12%) per year. After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
15. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term. CITY shall not be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, and litter at all times. PERMITTEE shall keep the Permit Area free and clear of weeds and brush as reasonably directed by CITY and to CITY'S reasonable satisfaction.
16. Inspection. CITY may at all times enter and inspect the Permit Area.
17. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
18. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. 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.
19. Ownership of Improvements and Personal Property.
 - a. Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures, and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"). PERMITTEE shall, at PERMITTEE'S sole cost and expense, remove PERMITTEE Improvements 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 PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE'S sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any PERMITTEE Improvements. If CITY elects to assume ownership of all or any PERMITTEE Improvements, PERMITTEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to CITY.

- b. 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, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so 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.
 - c. Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE'S personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit.
 - d. Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Permit.
 - e. CITY'S Right to Acquire Personal Property. If PERMITTEE wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.
20. Insurance. PERMITTEE shall obtain and maintain throughout the term of this Lease, at its sole cost and expense, all insurance required by this Lease. PERMITTEE'S liabilities under this Lease, 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 Lease. Notwithstanding any provision of this Lease 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 Lease.

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 all relevant endorsements for (and subject to CITY's written approval of same):

- (1) 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 One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000). 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;
- (2) Commercial Automobile Liability Insurance ("Auto"), if and when PERMITTEE uses vehicles on the Premises and/or in connection with PERMITTEE's use of the Premises, 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 Lease; and
- (3) Workers' Compensation Insurance, as required by applicable laws, for all of PERMITTEE's employees, if any, who work on the Premises and/or in connection with PERMITTEE's use of the Premises, 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.

20.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "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 Premises.

20.2 Primary & Non-Contributory. Each CGL and Auto 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.

- 20.3 Severability of Interest. Each CGL and Auto 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.
- 20.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease 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.
- 20.5 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.
- 20.6 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 Lease. 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.
- 20.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed 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 Allowed Uses.
- 20.8 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed 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.

20.9 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 Lease Use or the Premises in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

21. 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 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 harmless shall not include any established liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
22. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
23. Compliance with Laws. PERMITTEE shall at all times in the development, use, maintenance, occupancy, and operation of the Permit Area comply with all applicable laws, rules, and regulations, and direction by competent governmental authority, at PERMITTEE'S sole cost and expense. At least annually, PERMITTEE shall 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'S fire-suppression equipment in the Permit Area).
24. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or disability in PERMITTEE'S use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages, and

accommodations, and the hiring and retention of employees and contractors.

25. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
26. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code", as defined in Title 24 of the California Health and Safety Code), the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE'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 post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - d. Where required by law, PERMITTEE shall, at PERMITTEE'S sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
 - e. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

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

27. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties 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 of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.
28. 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 officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego 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.
29. 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.
30. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S occupancy, use, development, maintenance, and restoration of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
31. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
32. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent. Any assignment by operation of law shall automatically terminate this Permit.
33. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising 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 remove the item at PERMITTEE'S cost.
34. 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 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 the California Civil Code.

35. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. 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 interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE'S payment for such taxes, fees, and assessments shall not reduce any payment due CITY.
36. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. 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.
 - 36.1 Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of hazardous substances.
 - 36.2 Hazardous Substance. "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.
 - 36.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area results in a release of a hazardous substance or

petroleum related substance or its chemical constituents, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.

- 36.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring hazardous materials or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 36.5 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.
- 36.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California 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.
- 36.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area

("PERMITTEE's Operations"), resulted in any hazardous substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE's Operations on, in, from or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

37. Water Quality Assurances. The CITY and PERMITTEE 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 the City of San Diego's precious water resources. It is the PERMITTEE'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 Section 43.03, Stormwater Ordinance.

Therefore, PERMITTEE shall, at a minimum, implement and comply, as applicable, with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a).

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

38. 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 a 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 the rent 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 require the cure of the default.

39. 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.
40. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
41. Supersedure. As of the Effective Date, this Permit shall supersede and annul all prior permits, right-of-entry permits, or other agreements concerning PERMITTEE'S Operations, by and between CITY and PERMITTEE, or PERMITTEE's predecessors in interest, regarding the Permit Area, and each such agreement shall be void and of no effect, except as to indemnifications and hold harmless obligations, any fees that may have accrued, or any rights and remedies accrued or granted to CITY under those agreements.
42. 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.
43. 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.
44. 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.
45. 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 PERMITTEE at PERMITTEE'S Address for Notices, and to CITY 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

46. 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.

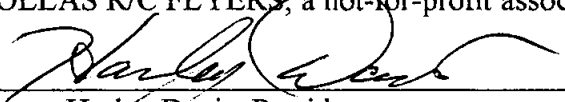
47. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. 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 Permit Use, 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, and acknowledges and agrees that CITY has no obligation to improve, modify, repair, replace, alter 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, including without limitation PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefor.

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

Date: 10-01-2013

CHOLLAS LAKE PARK FLYERS, also known as
CHOLLAS R/C FLYERS, a not-for-profit association

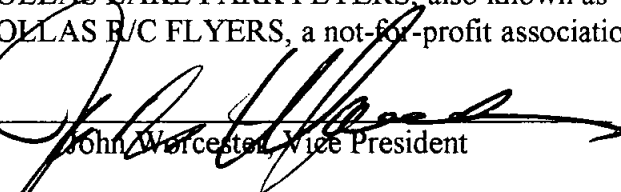
BY:


Harley Davis, President

Date: 10-01-2013

CHOLLAS LAKE PARK FLYERS, also known as
CHOLLAS R/C FLYERS, a not-for-profit association

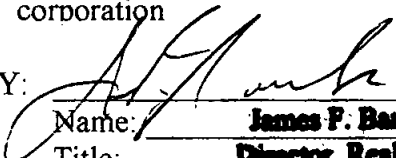
BY:


John Worcester, Vice President

Date: 10/14/13

THE CITY OF SAN DIEGO, a California municipal
corporation

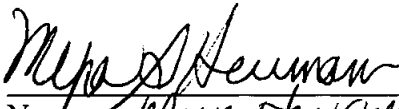
BY:


Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

The activity is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

Date: 10/14/13

BY: 
Name: Myra S. Heumann
Title: Senior Planner

Approved as to form and legality:

Date: 10/14/13

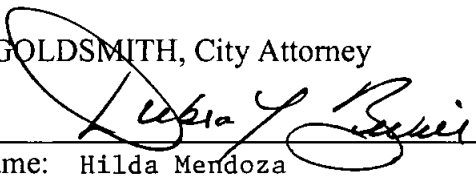
JAN I. GOLDSMITH, City Attorney
BY: 
Name: Hilda Mendoza
Title: Deputy City Attorney

Exhibit A: Permit Area

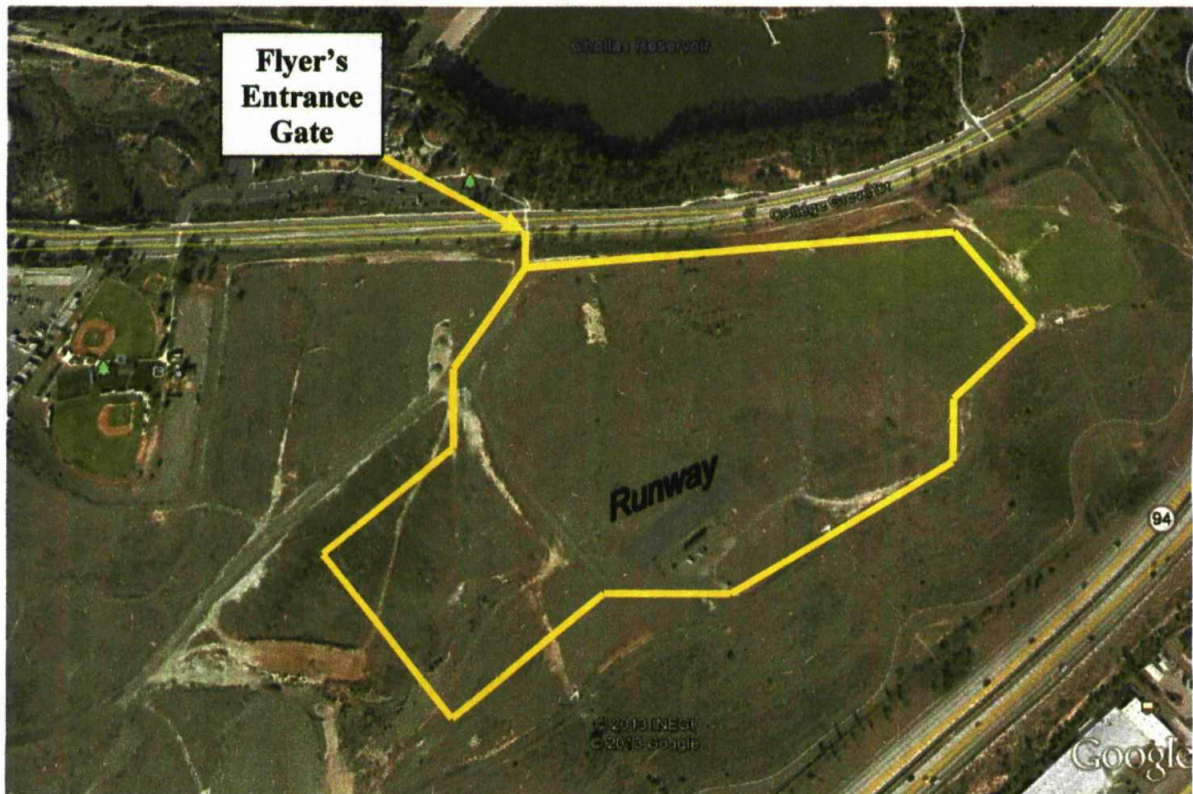


Exhibit B: Waiver

IMPORTANT: READ COMPLETELY BEFORE SIGNING (2 PAGES)

Participant's Name: _____
Please Print

CHOLLAS PARK R/C FLYERS RADIO-CONTROLLED AIRCRAFT FLIGHT ACTIVITY

CITY OF SAN DIEGO

WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT

I ACKNOWLEDGE that flying radio-controlled aircraft is a dangerous activity and fully realize the dangers of participating in the **CHOLLAS PARK R/C/FLYERS RADIO-CONTROLLED AIRCRAFT FLIGHT ACTIVITY ("Flight Activity")** and preparation for such Flight Activity.

I FULLY ASSUME THE RISKS associated with my participation in the Flight Activity, any negligence of The City of San Diego and its elected officials, officers, representatives, agents and employees (collectively and individually, the "City"), and the possibility of serious physical and/or mental trauma, injury, permanent paralysis or death associated with my participation in the Flight Activity.

As consideration for permission to use the City's property, facilities, and services related to the Flight Activity, **I, FOR MYSELF, MY HEIRS, EXECUTORS, ADMINISTRATORS, LEGAL REPRESENTATIVE, ASSIGNEES, AND SUCCESSORS IN INTEREST, AGREE TO THE FOLLOWING:**

1. **Waiver:** I do hereby release, waive, and discharge the City from all liability, and covenant not to sue the City for any and all claims relating in any way to any negligence of the City resulting directly or indirectly in personal injury, accident or illness (including death), and property damage or loss arising from, but not limited to, my participation in the Flight Activity and use of the City's property, facilities, or services.

Date

Signature of Adult Participant

Signature of Parent/Guardian of Minor

PRINT NAME & RELATIONSHIP

2. **Indemnification and Hold Harmless.** I shall protect, defend, indemnify, and hold the City, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly related to my participation in the Flight Activity, and my use of the city's property, facilities or services, and all costs and expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that my duty to indemnify and hold harmless shall not include any claims or

liability arising from the established sole willful misconduct of the City, its elected officials, officers, representatives, agents and employees. The City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, I shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

3. **Severability.** I further expressly agree that this City of San Diego Waiver Of Liability Assumption of Risk, And Indemnity Agreement ("Agreement") is intended to be as broad and inclusive as permitted by the law of the State of California and that if any portion hereof is held to be invalid, it is agreed that the balance of this Agreement shall, notwithstanding such partial invalidity, continue in full legal force and effect.
4. **Acknowledgement of Understanding.**

I HAVE READ THIS AGREEMENT, FULLY UNDERSTAND ITS TERMS, AND UNDERSTAND THAT I AM GIVING UP SUBSTANTIAL RIGHTS, INCLUDING MY RIGHT TO SUE. I ACKNOWLEDGE THAT I AM SIGNING THIS AGREEMENT FREELY AND VOLUNTARILY AND INTEND BY MY SIGNATURE THAT IT BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

Date

Signature of Adult Participant

Signature of Parent/Guardian of Minor

PRINT NAME & RELATIONSHIP