

**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 SAN DIEGO OPERA ASSOCIATION, a 501(c)3 nonprofit corporation ("Permittee").

1. Grant. City hereby grants permission to Permittee to enter upon City-owned property located at 202 "C" Street, San Diego, CA, 92101 a portion of the Terrace Meeting Rooms and Golden Hall Balcony known as the "Copper Room" in the San Diego Community Concourse. This portion consists of approximately 4,559 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 rehearsal purposes. Permittee shall also have the non-exclusive use of the walkways and restrooms in the Concourse.
3. Permit Fee. Consideration to City for granting this Permit shall be \$1,235.63 commencing on July 29, 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, CA 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, CA 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. Delinquent Rent. If Permittee fails to pay the rent when due, Permittee will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent 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 hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental 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 rent be less than twenty-five dollars (\$25).
5. Effective Date. This Permit shall be in effect on July 29, 2005, upon execution by City and Permittee and approval of the City Attorney, and shall expire on August 8, 2006⁵ or on execution by City and Permittee of a lease for use of the Copper Room, whichever occurs first.
6. Holdover. Any holding over by Permittee after expiration or termination shall not be considered as a renewal or extension of this Permit. The occupancy of the Premises after the

expiration or termination of this Permit constitutes a day-to-day tenancy at the daily rate of \$112.33, and paid monthly in advance on or before the first of each month. All other terms and conditions of this Permit shall continue in full force and effect; provided, however, CITY shall have the right to apply an increase of rent to bring the rent to fair market value and to terminate the holdover tenancy at will. However, in no event shall this Permit exceed three years.

7. Insurance. Prior to approval of this Permit by City, Permittee shall deliver to City a certificate of insurance for public liability and property damage in which "The City of San Diego, its elected officials, officers, representatives, agents, and employees" are named as additional insured, in an amount of not less than one million dollars (\$1,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force for the duration of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.

16. 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.
17. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
18. 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.
19. 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.
20. 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.
21. 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.
22. Inspection. City may enter and inspect the operations permitted under this Permit at any time.
23. 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.
24. 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:

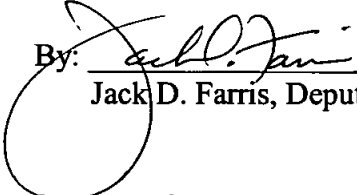
San Diego Opera Association
1200 Third Avenue, 18th Floor
San Diego, CA 92101

25. 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.

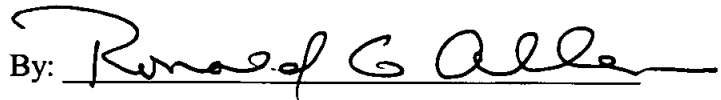
THE CITY OF SAN DIEGO, a municipal corporation

Date: 7/29/05

By: 
Jack D. Farris, Deputy Director

SAN DIEGO OPERA ASSOCIATION, a 501(c)3 corporation

Date: 7/29/05

By: 

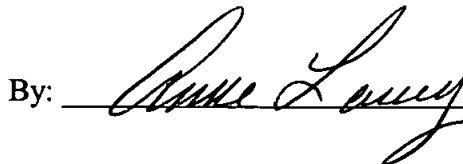
Date: _____

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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: 7/29/05

By: 

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date: 7/29/05

By: 
Deputy City Attorney

CRG/
7/29/05

EXHIBIT "A" - PERMIT AREA

CONCOURSE SECOND FLOOR

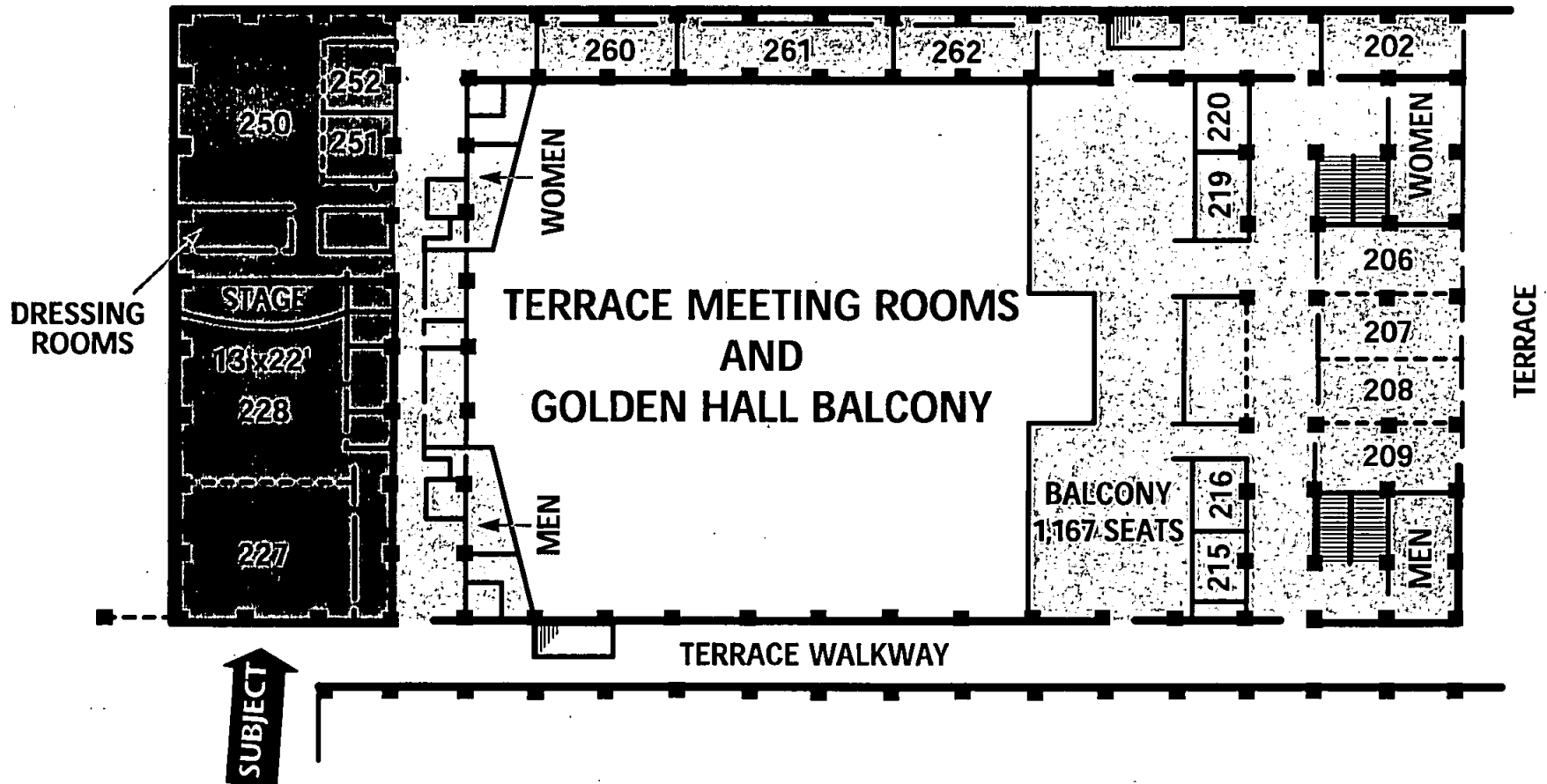


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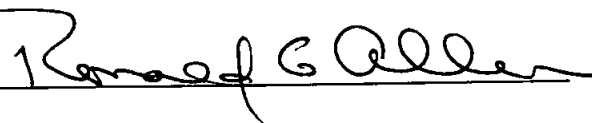
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By: 
Jack D. Farris, Deputy Director

SAN DIEGO OPERA ASSOCIATION, a 501(c)3 corporation

Date: 7/29/05

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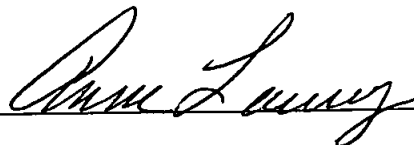
Date: _____

By: _____

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ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

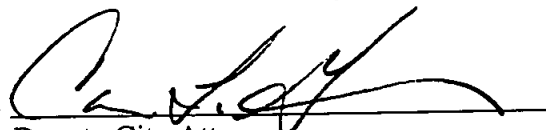
Date: 7/29/05

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APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date: 7/29/05

By: 
Deputy City Attorney

CRG/
7/29/05

EXHIBIT "A" - PERMIT AREA

CONCOURSE SECOND FLOOR

