

PUBLIC WALKWAYS OCCUPANCY PERMIT

P - 00030

This Public Walkways Occupancy Permit ("Permit") is granted this 10th day of February, 2015, pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting held on January 6, 2015, to PHO NOMENON INC., a California corporation ("Permittee"), whose address is 5295 East Second Street, Long Beach, California 90803, as the operator of Pho Nomenon and lessee of premises at 5295 East Second Street, Long Beach, California.

Permission is granted to Permittee to occupy the public right-of-way with the following obstruction: **low barrier, three (3) tables, and six (6) chairs** at 5295 East Second Street, Long Beach, California. Dimensions and location of the area to be occupied are as shown on Exhibit "A", incorporated by reference and made a part of this Permit; provided that all obstructions are placed only within the permit area shown on Exhibit "A".

This Permit is granted with reference to the following facts:

1. Permittee proposes to occupy the public right-of-way as shown on Exhibit "A"; and
2. The proposed occupancy will not now or at any time interfere with continued public use of the public street right-of-way; and
3. That there is no present or foreseeable conflicting public need for the proposed use of the public street right-of-way area and its temporary withdrawal from public use will not be injurious or detrimental to the public; and
4. That this use of a portion of the public street right-of-way is consistent with proper and lawful street uses and the use is approved; and
5. The City Engineer has determined that this use is in compliance with Chapter 14.14 of the Long Beach Municipal Code, all related to temporary use of the public rights-of-way.

The use of the public street right-of-way is granted upon and subject to the

1 following terms and conditions:

2 1. The minimum width of the public walkway shall be ten (10) feet, or as
3 otherwise approved by the City Council pursuant to Chapter 14.14 of the Long Beach
4 Municipal Code, and any obstruction must permit at least five (5) feet of unobstructed
5 area of public walkway.

6 2. The obstruction shall abut the property and not be located in a
7 manner which interferes with the flow of pedestrian or other traffic.

8 3. The maximum height of any such obstruction shall be six (6) feet and
9 all such obstructions shall be entirely portable, except as specifically authorized by the
10 City Engineer.

11 4. This Permit may be immediately suspended for a designated time
12 period at any time in the event that, in the discretion of the City Council or City Manager,
13 such obstruction would interfere with street improvement activities, construction activities,
14 cleaning efforts or other similar activities.

15 5. The obstruction shall be kept in a good state of repair and in a safe,
16 sanitary, and attractive condition.

17 6. Such obstruction may not be located within twenty (20) feet from an
18 intersection (measured to the prolongation of the near curb of the intersecting street) or
19 within ten (10) feet from a driveway or alley (measured to the near end of the fully
20 depressed portion of an apron-type driveway or to the prolongation of the near curb of the
21 driveway) unless otherwise approved by the City Council pursuant to the considerations
22 specified in Chapter 14.14 of the Long Beach Municipal Code.

23 7. The public street right-of-way shall be used by Permittee only for the
24 obstruction described above and in the area shown on Exhibit "A".

25 8. The area in front of the entrance to the business shall not be
26 obstructed by barricades, chairs, tables or other furniture.

27 9. The Permittee shall place all obstructions, and any accessories or
28 equipment located within a dining or entertainment area, in strict accordance with Fire

1 Department and Health and Human Services Department standards and contained within
2 Chapter 14.14 of the City of Long Beach Municipal Code.

3 10. No surface improvements, included but not limited to special paving
4 surfaces, may be removed or altered by the Permittee unless approved in advance in
5 writing by the City Engineer.

6 11. The Permittee shall not allow cleaning chemicals, or other foreign
7 matter to flow into the parkway tree well, and shall otherwise protect the health of
8 adjacent street trees, and shall likewise prevent the discharge of litter, cleaning chemicals
9 and all other foreign matter to the storm drain system.

10 12. The Permittee shall protect any parkway trees in the immediate
11 vicinity of the permit area from damage due to the Permittee's cleaning or other activities
12 on the public walkway. The Permittee shall not interfere with City's access to parkway
13 trees for maintenance purposes. Any special maintenance of the parkway trees is the
14 responsibility of the Permittee and must be performed by a qualified landscape contractor
15 acting under a permit from City's Street Landscaping Division. City shall not be held
16 financially responsible for damage to Permittee's sidewalk furniture or awnings occurring
17 in the course of regular street tree maintenance.

18 13. Upon any termination of this Permit, whether by revocation or
19 otherwise, Permittee shall remove the obstructions authorized by this Permit at the sole
20 discretion of the City Engineer and shall otherwise restore the public street right-of-way to
21 a condition substantially the same as existed immediately prior to the occupancy
22 provided for by this Permit. Should Permittee fail or refuse to remove the obstructions,
23 City may do so and, in such event, the security deposit paid by Permittee shall be applied
24 to City's costs. Permittee shall reimburse City for any costs in excess of the security
25 deposit. In the event of removal by City of all or any portion of the obstructions, City shall
26 not be liable for any damage to or loss of any property of Permittee.

27 14. The following additional conditions shall apply to public walkway
28 occupancy permits for dining or entertainment areas:

1 A. Any dining or entertainment area shall be defined by
2 placement of sturdy fencing or other suitable barriers, not to exceed forty-eight (48)
3 inches in height, as approved by the City Engineer. Such barriers may only be affixed to
4 public property with the prior approval of the City Engineer.

5 B. All accessories to dining or entertainment uses such as plants
6 or planter boxes, umbrellas, podiums, menu boards, musical equipment and heaters may
7 not exceed those enumerated on Exhibit "A", and must be located inside the barrier, as
8 shown on Exhibit "A".

9 C. All dining and entertainment which takes place on the public
10 right-of-way shall conform to the requirements of Chapter 8.80 of the Long Beach
11 Municipal Code regarding noise. Complaints regarding noise shall be logged by city staff
12 and may be the basis for suspension, cancellation, or non-renewal of a permit.

13 D. The Permittee shall be responsible for cleaning the public
14 walkway occupied by a dining or entertainment area.

15 E. Sidewalk dining or entertainment is permitted to operate
16 between the hours of 10:00 a.m. and 10:00 p.m. only.

17 15. Any permit issued within the downtown area as defined on Exhibit
18 "B" and made a part of this Permit shall comply with all of the foregoing requirements and
19 the following additional requirements:

20 A. No tents or windbreaks may be used in, over, or around dining
21 or entertainment areas.

22 B. Temporary banners, not exceeding the height of the barrier
23 and attached to the barrier are permitted for a two (2) week period no more than four (4)
24 times per year.

25 C. Menu boards must be portable, located within the dining area,
26 and must not exceed five (5) feet, six (6) inches tall. Menu boards may be either a single
27 pole pedestal of painted metal or a board attached to the inside of the barrier, parallel to
28 the barrier.

1 D. The following are prohibited on the public walkway in the
2 downtown area: television monitors, canopies and A-frame signs.

3 16. Upon expiration, a new permit must be obtained on the basis of a
4 new application and payment of a new fee and any security deposit amount due.
5 Renewal of the permit is not automatic and there is no right or entitlement to any use of
6 the public right-of-way. Security deposits may be adjusted from year to year based on
7 permit compliance and enforcement cost history. This Permit shall never be construed
8 as the grant by City of any right to permanently use or occupy all or any portion of the
9 public right-of-way; nor shall it ever be construed as a waiver on the part of City, or as an
10 estoppel against it, which would in any manner whatsoever bar or limit, or otherwise
11 prejudice, its right to at any time whatsoever require a discontinuance of the use or
12 occupancy of all or any part of the public street right-of-way, the removal therefrom of all
13 or any obstructions erected or maintained under this Permit and the restoration of such
14 public street right-of-way to a clean condition, all at the sole cost and expense of
15 Permittee.

16 17. Notices of violation of any of the terms and conditions of this permit
17 may be issued by the City of Long Beach. Within the downtown area as defined on
18 Exhibit "B", preliminary informal notices may be issued by Downtown Long Beach
19 Associates. The enforcement process is set forth on Exhibit "C", attached hereto, and
20 made a part of this permit. Notwithstanding the above, City may revoke this Permit at
21 any time by giving thirty (30) days written notice to Permittee or cancel the permit for
22 noncompliance with its terms. Such notice shall be signed by the City Manager, postage
23 pre-paid, and addressed to Permittee at its address provided above.

24 18. Permittee accepts this public right-of-way in its present condition and
25 agrees to maintain the same in a safe, clean, and orderly condition. Any and all uses
26 made of the public right-of-way shall be at the sole risk, cost, and expense of Permittee.
27 Permittee, by its acceptance of this Permit, agrees to indemnify, defend, save and keep
28 City, its officers, agents, and employees free and harmless from and against any and all

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 liability as well as from and against any and all loss, claims, demands, damages,
2 expenses and costs of whatsoever nature arising out of or in any manner resulting,
3 directly or indirectly, from Permittee's operations on or the condition, use or misuse of the
4 public street right-of-way, including liability, claims or damages to or as a result of any
5 structures or fixtures on the public street right-of-way or appurtenances to it.

6 19. In partial performance of this obligation, Permittee shall obtain and
7 keep in full force and effect such public liability insurance and property damage insurance
8 as required by the Long Beach Municipal Code.

9 20. Nothing in this Permit shall be construed to excuse compliance by
10 Permittee with any and all of the laws and ordinances of City and State; neither shall this
11 Permit be deemed to obviate the necessity of Permittee's obtaining such other permits or
12 licenses as are required to conduct specific activities within the area, including but not
13 limited to entertainment or the sale, service or consumption of alcoholic beverages.

14 21. The terms of this permit shall be enforced by the procedure set forth
15 on Exhibit "C", attached and made a part of this permit.

16 22. In case suit shall be brought for the recovery of possession of all or
17 any portion of the public right-of-way or because of the breach of any covenant contained
18 in this Permit to be kept and performed on the part of Permittee, Permittee shall pay to
19 City reasonable attorneys' fees which shall be fixed by the court.

20 23. Permittee shall not assign this Permit, or any interest in it, nor shall
21 this Permit, or any interest in it, be subject to transfer or assignment by order of any
22 court. Any such transfer or assignment shall not create any right whatsoever in the
23 transferee or assignees and shall entitle the City Manager, at his discretion, to terminate
24 this Permit.

25 ///
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27 ///
28 ///

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1 The acceptance of this Permit by Permittee shall be endorsed on this
2 Permit and shall be an acceptance by Permittee of all of the terms and conditions of this
3 Permit and an agreement to abide and comply with it. Permittee further acknowledges
4 that Permittee is aware of the requirements of Long Beach Municipal Code Chapter
5 14.14, and that Permittee shall conduct all activities hereunder in compliance with such
6 chapter.

7
8
9 October 7, 2014

PHO NOMENON INC., a California corporation

By [Signature]
Name THU DO
Title CEO

11 October 7, 2014

By [Signature]
Name DANA TRAN
Title ASST manager

"PERMITTEE"

15
16 February 10, 2014⁵

CITY OF LONG BEACH, a municipal corporation

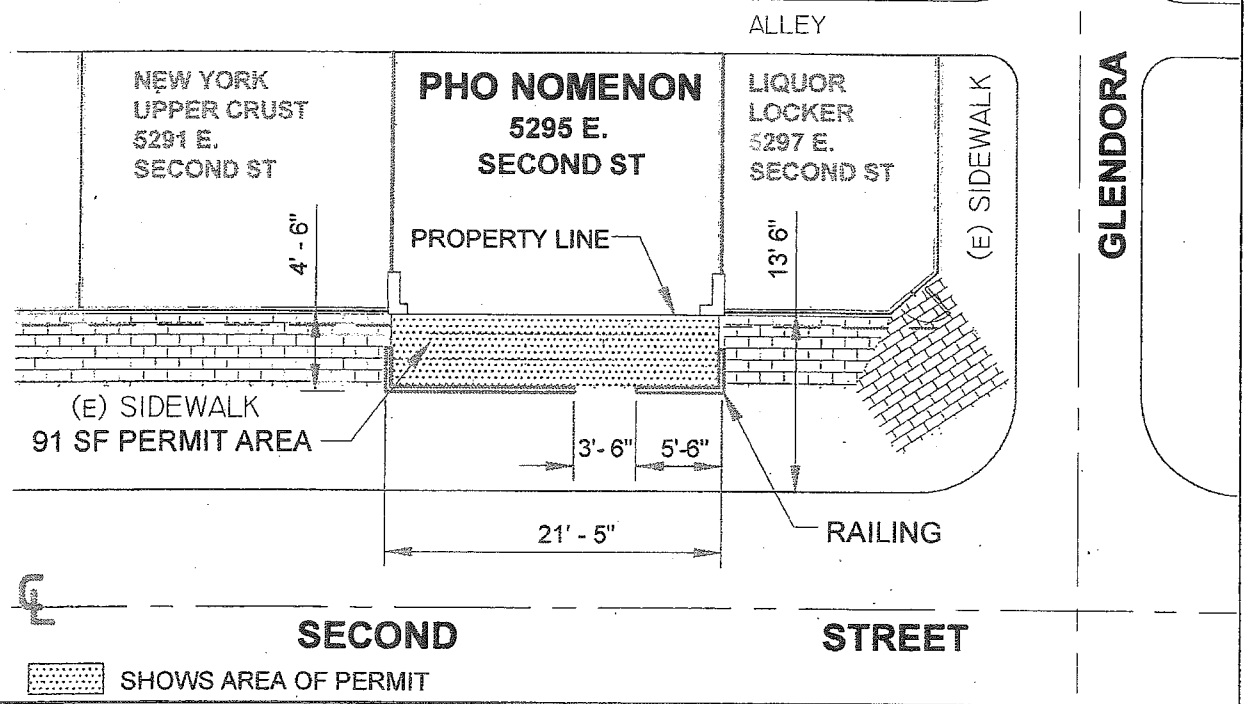
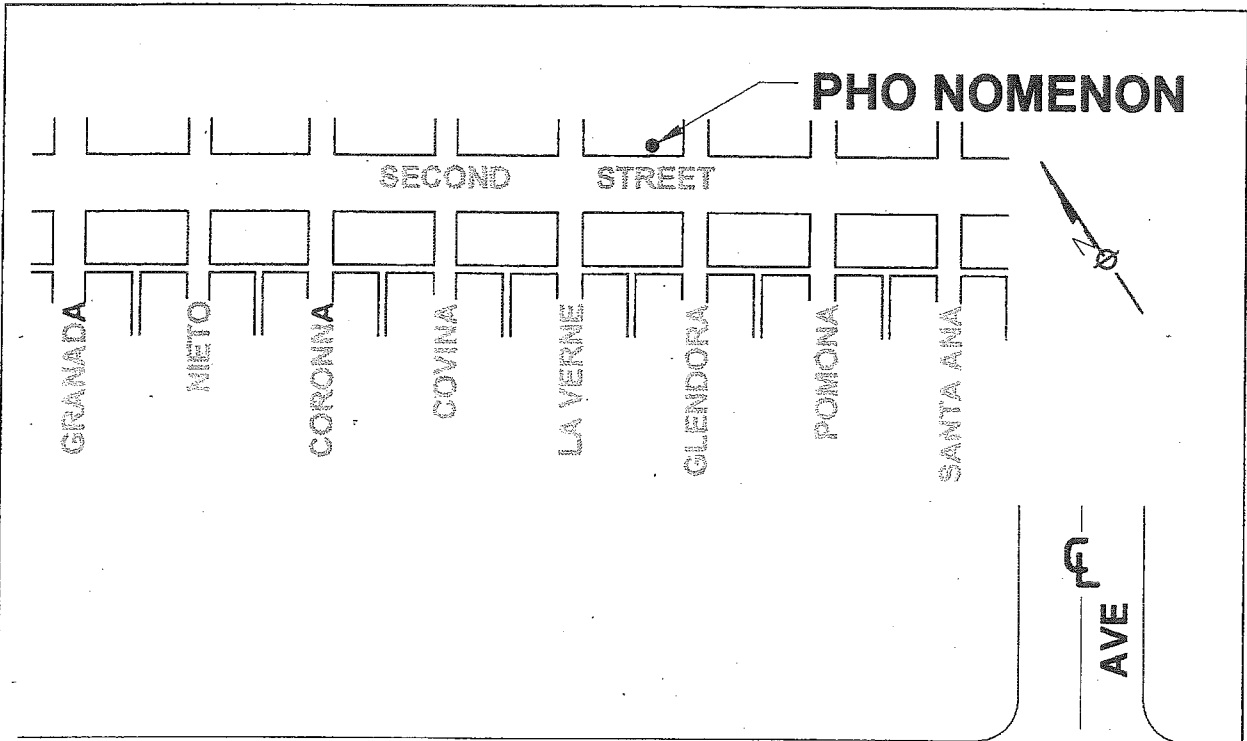
By [Signature] EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
City Manager

"CITY" Assistant City Manager

19
20 Approved as to form this 26th day of January, 2014¹⁵

22 CHARLES PARKIN, City Attorney

23
24 By [Signature]
Deputy City Attorney



CITY OF LONG BEACH - CALIFORNIA
DEPARTMENT OF PUBLIC WORKS, ENGINEERING BUREAU
PUBLIC WALKWAYS OCCUPANCY
PERMIT
PHO NOMENON
5295 EAST SECOND STREET

List of Approved Furnishings and Accessories
(Attachment to Public Walkways Occupancy Permit for Sidewalk Dining Purposes)

Restaurant: PHENOMENON Permittee: PHENOMENON, INC.

Address: 5295 East Second St. Telephone: (626) 217-7940

Tables
number: 3

Chairs
number: 6

Umbrella(s)
height & number: _____

Heater(s)
height & number: _____

Menu board
note: maximum height of 5 ft 6 in, maximum width of 2 ft
& none permitted in the coastal zone

Waiter station
size: _____

Planters for trees or other greenscaping
describe: _____

Other: _____

We intend to make occasional use of the permit area for live or recorded entertainment
(Note: A separate entertainment permit is required).

The following are prohibited:

- canopies (ground supported)
- television monitors

Permittee signature: Diana Tran

Date: Oct 31, 2013

Print name here: Diana Tran

This list of furnishings and accessories is effective only when attached to a completed Public Walkways Occupancy Permit.

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EXHIBIT "B"

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"Downtown area" means the area bounded northerly by the centerline of Tenth Street; westerly by the centerline of Maine Avenue north of First Street, and the centerline of Golden Avenue south of First Street and the centerline of Golden Shore and its southerly prolongation; easterly by the centerline of Lime Avenue north of First Street and the centerline of Alamitos Avenue and its southerly prolongation south of First Street; southerly by the mean high tide line of the Pacific Ocean and its prolongation across the entrance to Pacific Terrace Harbor and Queen's Way Landing Boat Basin.

EXHIBIT "C"

PUBLIC WALKWAYS OCCUPANCY PERMITS
ENFORCEMENT PROCESS

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1. Letter of information sent to Permittee regarding Municipal Code requirements and requested to correct an observed violation of permit conditions.
 - If not remedied in ten (10) working days, send official Notice of Violation.
2. Notice of Violation
 - Indicates that Permittee can be found in default for failure to comply with permit conditions per Municipal Code Section 14.14.090.
 - Notes that uncorrected violations will be reported to the City Council at the next permit application.
 - Alerts Permittee that the Alcoholic Beverage Control (ABC) will be notified of all permits declared in default.
 - If violation of permit conditions is not corrected within ten (10) working days, send Second Notice of Violation by certified mail.
 - Copies of Notice of Violation to be sent to the City Manager, Downtown Long Beach Associates (DLBA) and the Redevelopment Agency.
3. Second Notice of Violation
 - Inform Permittee that "On (date 10 working days hence) you will receive a Notice of Default if permit violations not corrected."
 - If permit violations not corrected within ten (10) working days, send Notice of Default by certified mail.
 - Copies of Second Notice of Violation to be sent to the City Manager, DLBA and the Redevelopment Agency.
4. Notice of Default by Department of Public Work
 - Provides Permittee ten (10) working days to remedy violation.
 - "If Permittee fails or refuses to remedy the default within the time specified, the right of the Permittee to use the public walkway shall cease and City shall have the right to remove the public walkway obstruction at Permittee's expense" (LBMC 14.14.090).
 - If a Notice of Default is issued, the security deposit that was paid with the permit application will be forfeited.
 - Second ABC notice of permit status upon actual default.
 - City Manager, DLBA and Redevelopment Agency informed when final default occurs.
5. City pick-up of obstructions at Permittee's expense and/or possible legal action to restrain use of sidewalk by the City Prosecutor.
6. Prior to New Permit Issuance
 - Payment of new permit processing fee and security deposit.
 - Payment of any fees, damages, or City costs assessed for prior code enforcement actions.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/14/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER VALI DE VRIES 1777 BELLFLOWER BLVD STE 111 LONG BEACH CA 90815-4019	CONTACT NAME: Vikki Skoug PHONE (A/C No. Ext): 562-494-7700 FAX (A/C No.): 562-494-7050 E-MAIL ADDRESS: vikki.skoug.aulz@statefarm.com	
	INSURER(S) AFFORDING COVERAGE INSURER A: State Farm General Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAIC # 25151
INSURED PHO NOMENON 5295 E 2ND ST LONG BEACH CA 90803-5328		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BUSINESS-MERCANTILE GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	92-CS-V241-2 G	09/11/2014	09/11/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
<input type="checkbox"/>	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<input type="checkbox"/>	UMBRELLA LIAB EXCESS LIAB OCCUR CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

APPROVED AS TO SUFFICIENCY
Michael Allee
 RISK MANAGER
 CITY OF LONG BEACH
 DATE: 1/28/15

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
LOCATION: 5295 E 2ND ST LONG BEACH CA 90803

APPROVED AS TO FORM
 1/28/2015
 CHARLES PARKIN, City Attorney
 By *[Signature]*
 LINDA LYNN
 DEPUTY CITY ATTORNEY

CERTIFICATE HOLDER CITY OF LONG BEACH OFFICE OF THE CITY ENGINEER 333 WEST OCEAN BLVD 10TH FLOOR LONG BEACH CA 90802	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>[Signature]</i>
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CITY OF LONG BEACH

APPROVED AS TO FORM

DEPARTMENT OF PUBLIC WORKS ATTN: RIGHT-OF-WAY COORDINATOR

333 West Ocean Boulevard, 10th Floor • Long Beach, California 90802 • (562) 570-6975 FAX (562) 570-5176

1/28, 2015
CHARLES PARKIN, City Attorney

General Liability Endorsement – Public Walkways Occupancy Permits

Minimum Limits: \$1,000,000 per occurrence, \$2,000,000 general aggregate

LINDA T. VU
DEPUTY CITY ATTORNEY

A. GENERAL LIABILITY POLICY INFORMATION

- Insurance Company State Farm Ins Co.
- Policy No. 92-CS-V241-2 Policy Term (from) 9-11-14 (to) 9-11-15
- Endorsement effective date 1-14-15 Endorsement expiration date 9-11-15
- Name of Insured Pho Nomenon
- Address of Named Insured 5295 E 2nd St Long Beach Ca 90815
- Address of Permitted Operations same as above
- Deductible or Self-insured Retention (nil unless otherwise specified) \$ 1,000
- Policy Limits: Occurrence \$ 1,000,000 General Aggregate: \$ 2,000,000
- Policy Form equivalent to: CG 00 01 _____ CG 00 02 _____ GL 00 02 _____

B. POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

- ADDITIONAL INSURED.** The City of Long Beach, its boards and commissions, and their officials, employees, and agents are included as additional insured with respect to all loss, liability, claims, demands, causes of action, damages, settlement, expenses, and costs (including but not limited to attorney's fees and defense and investigation expenses) arising out of, or in any manner incident to, operations performed by or on behalf of the Named Insured related to the permit issued by the City.
- PRIMARY AND NONCONTRIBUTORY COVERAGE.** The coverage afforded by this policy to the City, its boards and commissions, and their officials, employees and agents shall be primary insurance. Any other insurance or self-insurance maintained by the City, its boards, officials, employees, and agents shall be in excess of this insurance and not contribute to it.
- SEVERABILITY OF INTERESTS.** The insurance afforded by this policy applies separately to each insured that is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Insurer's limit of liability.
- CROSS LIABILITY.** The naming of more than one insured under this policy shall not, for that reason alone, extinguish any rights of one insured against another, subject to the insurer's limit of liability.
- CANCELLATION NOTICE:** This insurance shall not be cancelled, nonrenewed, or reduced in coverage or limits except after thirty (30) days prior written notice has been given to the City (ten (10) days prior written notice if the policy is cancelled for nonpayment of premium). Such notice shall be addressed to the City of Long Beach at the address above.

C. INCIDENT AND CLAIM REPORTING PROCEDURES

Incident and claims are reported to the insurer at:

ATTENTION: Vali De Vries Agent State Farm
(Name) (Title) (Company)
 ADDRESS: 1777 Bellflower Blvd Ste 111 Long Beach Ca 90815
 TELEPHONE: 562 494-7700 FAX: 562 494-7050

D. SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, (print name) VIKKI Skoug, warrant that I have authority to bind the insurance company listed above in Item A.1. and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

DATE

TITLE: Office Mgr ORGANIZATION: State Farm Ins Co
 ADDRESS: 1777 Bellflower Blvd Ste 111 Long Beach Ca 90815
 TELEPHONE: 562 494-7700 FAX NO. 562 494 7050