

Robert E. Shannon
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333 West Ocean Boulevard
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PUBLIC WALKWAYS OCCUPANCY PERMIT

29178

This Public Walkways Occupancy Permit ("Permit") is granted this 10th day of June, 2005, pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting held on May 10, 2005, to **DIAMAN, INC., a California corporation**, ("Permittee"), whose address is **5291 East Second Street, Long Beach, California 90803**, as the operator of the **"NY'S UPPER CRUST PIZZA"** restaurant and lessee of premises at **5291 East Second Street**, Long Beach, California 90803.

Permission is granted to Permittee to occupy the public right-of-way with the following obstruction: **three (3) tables and four (4) chairs at 5291 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 following terms and conditions:

- 1 1. The minimum width of the public walkway shall be ten feet, or as
2 otherwise approved by the City Council pursuant to Chapter 14.14 of the Long Beach
3 Municipal Code, and any obstruction must permit at least five feet of unobstructed area of
4 public walkway.
- 5 2. The obstruction shall abut the property and not be located in a manner
6 which interferes with the flow of pedestrian or other traffic.
- 7 3. The maximum height of any such obstruction shall be six feet and all
8 such obstructions shall be entirely portable, except as specifically authorized by the City
9 Engineer.
- 10 4. This permit may be immediately suspended for a designated time
11 period at any time in the event that, in the discretion of the City Council or City Manager,
12 such obstruction would interfere with street improvement activities, construction activities,
13 cleaning efforts or other similar activities.
- 14 5. The obstruction shall be kept in a good state of repair and in a safe,
15 sanitary and attractive condition.
- 16 6. Such obstruction may not be located within twenty feet from an
17 intersection (measured to the prolongation of the near curb of the intersecting street) or
18 within ten feet from a driveway or alley (measured to the near end of the fully depressed
19 portion of an apron-type driveway or to the prolongation of the near curb of the driveway)
20 unless otherwise approved by the City Council pursuant to the considerations specified in
21 Chapter 14.14 of the Municipal Code.
- 22 7. The public street right-of-way shall be used by Permittee only for the
23 obstruction described above and in the area shown on Exhibit "A".
- 24 8. The area in front of the entrance to the business shall not be
25 obstructed by barricades, chairs, tables or other furniture.
- 26 9. The Permittee shall place all obstructions, and any accessories or
27 equipment located within a dining or entertainment area, in strict accordance with Fire
28 Department and Health and Human Services Department standards and contained within

1 Chapter 14.14 of the City of Long Beach Municipal Code.

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

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

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

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

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

28 A. Any dining or entertainment area shall be defined by placement

1 of sturdy fencing or other suitable barriers, not to exceed 48 inches in height, as approved
2 by the city engineer. Such barriers may only be affixed to public property with the prior
3 approval of the city engineer;

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

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

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

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

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

19 B. Temporary banners, not exceeding the height of the barrier and
20 attached to the barrier are permitted for a two-week period no more than four times per
21 year.

22 C. Menu boards must be portable, located within the dining area,
23 and must not exceed five feet, six inches tall. Menu boards may be either a single pole
24 pedestal of painted metal or a board attached to the inside of the barrier, parallel to the
25 barrier.

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

28 Upon expiration, a new permit must be obtained on the basis of a new

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

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

20 Permittee accepts this public right-of-way in its present condition and agrees
21 to maintain the same in a safe, clean and orderly condition. Any and all uses made of the
22 public right-of-way shall be at the sole risk, cost and expense of Permittee. Permittee, by
23 its acceptance of this Permit, agrees to indemnify, defend, save and keep the City, its
24 officers, agents and employees free and harmless from and against any and all liability as
25 well as from and against any and all loss, claims, demands, damages, expenses and costs
26 of whatsoever nature arising out of or in any manner resulting, directly or indirectly, from
27 Permittee's operations on or the condition, use or misuse of the public street right-of-way,
28 including liability, claims or damages to or as a result of any structures or fixtures on the

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1 public street right-of-way or appurtenances to it.

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

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

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

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

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

20 The acceptance of this Permit by Permittee shall be endorsed on this Permit
21 and shall be an acceptance by Permittee of all of the terms and conditions of this Permit
22 and an agreement to abide and comply with it. Permittee further acknowledges that
23 Permittee is aware of the requirements of Long Beach Municipal Code Chapter 14.14, and

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1 that Permittee shall conduct all activities hereunder in compliance with such chapter.

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DATED this 10 day of June, 2005.

CITY OF LONG BEACH, a municipal corporation

By: [Signature]
City Manager
CITY

ACCEPTED this 5th day of April, 2005.

DIAMAN, INC., a California corporation

By: [Signature]
Title: SECRETARY
DIAMAN INC.

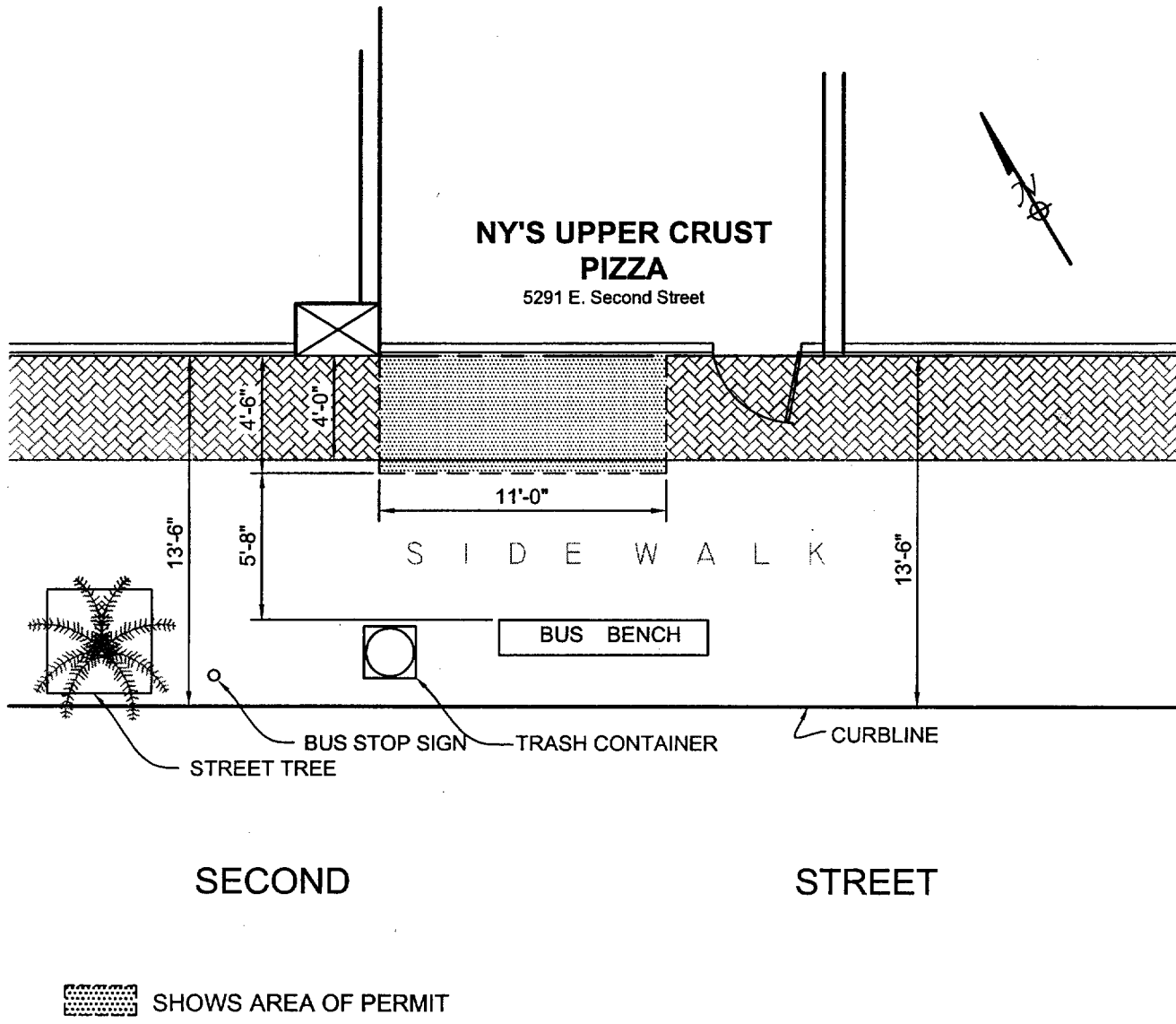
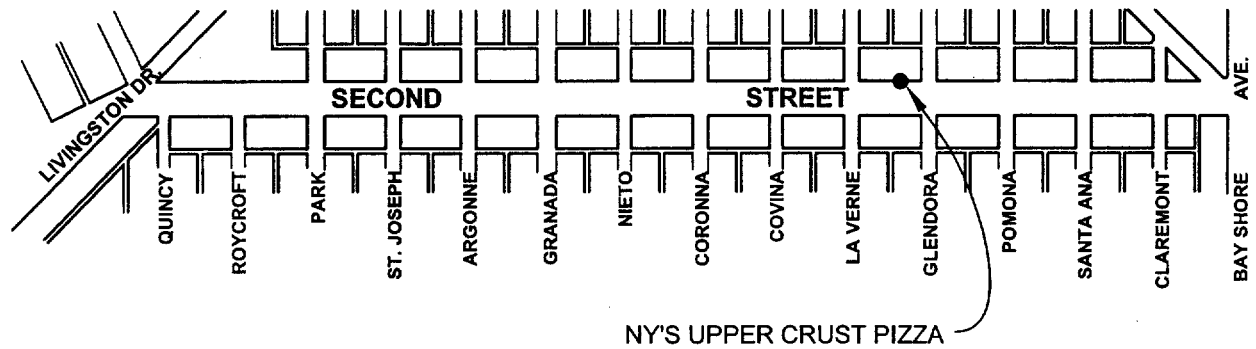
By: [Signature]
Title: RESIDENT
DIAMAN, INC

PERMITTEE

Approved as to form this 15th day of June, 2005.

ROBERT E. SHANNON, City Attorney

By: [Signature]
Deputy



CITY OF LONG BEACH - CALIFORNIA
 DEPARTMENT OF PUBLIC WORKS, ENGINEERING BUREAU

PUBLIC WALKWAYS OCCUPANCY

PERMIT

**NY'S UPPER CRUST PIZZA
 5291 East Second Street**

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

Restaurant: NY'S UPPER CRUST PIZZA Permittee: DIAMANI, INC

Address: 5291 E 2ND ST Telephone: 562-987-4700

X Tables
number: 3

X Chairs
number: ~~3~~ 4

0 Umbrella(s)
height & number: _____

0 Heater(s)
height & number: _____

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

0 Waiter station
size: _____

0 Planters for trees or other greenscaping
describe: _____

0 Other: _____

0 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: Fred Mannion SEC 11/20/04 Date: 12-28-04

Print name here: FRED MANNION / MARIE MANNION

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

EXHIBIT "B"

"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; southernly 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

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 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 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 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 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 the 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.