

P - 00318

RIGHT-OF-ENTRY PERMIT

THIS RIGHT-OF-ENTRY PERMIT ("Permit") is made as of September 1, 2022 (the "Effective Date") by and between the CITY OF LONG BEACH, a California municipal corporation ("City") and the CITY OF SIGNAL HILL, a California municipal corporation ("Permittee").

WHEREAS, Permittee has an immediate need to occupy approximately 60,225 square feet of certain real property (APN 7215-002-271) owned by City and located within the City of Signal Hill, California more particularly depicted on Exhibit "A" and legally described in Exhibit "B" attached hereto and incorporated herein by reference (the "Premises").

WHEREAS, City is willing to grant Permittee the temporary right to occupy the Premises upon the terms and conditions described in this Permit.

NOW THEREFORE, City and Permittee, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, agree as follows:

1. **Use and Access.** City hereby authorizes Permittee, and its agents, employees, contractors, consultants and representatives ("Permittee Representatives") to exclusively use and occupy the Premises, for the express purpose of maintenance and development of open space and associated temporary public amenities. Permittee shall not use the Premises for any other purpose other than as described in this Section. Neither Permittee nor any Permittee Representatives shall bring any Hazardous Materials (as defined in Section 7.B., below) upon the Premises.

2. **Term.** Permittee and Permittee Representatives may enter upon and occupy the Premises beginning upon the Effective Date of this Permit, and ending upon the date that is one (1) year after the Effective Date (i.e., September 1, 2023), unless earlier terminated ("Term"). Either party may terminate this Permit at any time as follows: (1) City may terminate this Permit upon thirty (30) days' advance written notice for any reason or no reason, or (2) Permittee may terminate this Permit upon five (5) days' advance written notice for any reason or no reason. Upon termination or expiration, Permittee shall thereafter completely vacate the Premises unless it has entered into a Long Term Transaction (as defined below) for the Premises. During the Term, Permittee and City shall negotiate in good faith to enter into a long-term lease for the Premises and/or a purchase and sale agreement for the Premises (a "Long Term Transaction") on mutually-acceptable terms and conditions, and City agrees that it shall not negotiate with any other person or party with respect to the lease or sale of the Premises during the Term.

3. **Premises and Improvements.** Permittee accepts the Premises "AS IS", and City makes no warranty or representation whatsoever with respect to the Premises, including without limitation habitability, access to utilities and/or suitability for Permittee's proposed use. Any improvements necessary for Permittee's use of the Premises shall be temporary in nature, installed solely at Permittee's expense and shall be in full compliance with the City

of Signal Hill's Vacant Parcel Ordinance (Signal Hill Municipal Code Chapter 12, Section 16) ("VPO").

4. **Fee.** As consideration for the occupancy of the Premises, Permittee shall make improvements to the Premises to comply with the VPO and Permittee shall not be required to pay any fee or other payment to City in connection with this Permit or Permittee's access to or use of the Premises. In addition, Permittee shall waive any and all fees currently unpaid by City in connection with the VPO and agrees not to assess any further fees against City throughout the Term of this Permit, unless this Permit is terminated by City prior to the expiration of the Term, in which case, Permittee may assess any and all fees required under the VPO against City, arising on and after the Effective Date.

5. **Insurance.** Concurrent with the execution of this Permit and at all times during the Term, Permittee shall:

A. Procure and maintain the following types of insurance at Permittee's sole expense, including any extensions, renewals, or holding over thereof, from (i) insurance companies that are admitted to write insurance in the State of California or from authorized non-admitted insurers that have ratings of, or equivalent to, an A:VIII by A.M. Best Company, or (ii) the California Joint Powers Insurance Authority:

1. Commercial general liability insurance equivalent in coverage scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Coverage shall include but is not limited to broad form contractual liability coverage, cross liability protection, and products and completed operations. The City of Long Beach, its officials, employees, and agents shall be added as additional insureds by endorsement equivalent in coverage scope to ISO form CG 20 26 11 85 and such endorsement shall protect the City, its officials, employees, and agents from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Permittee or from maintenance or use of the Premises. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
2. All Risk property insurance in an amount sufficient to cover the full replacement value of Permittee's personal property, improvements, and equipment on the Premises. With respect to damage to property, City and Permittee each hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.
3. Workers' compensation insurance as required by the State of California and, if workers' compensation is required, employer's liability insurance

in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness. Permittee agrees to obtain and furnish evidence to City of the waiver of Permittee's workers' compensation insurance carrier of any right of subrogation against the City.

B. Any self-insurance program or self-insured retention must be approved separately by City and shall protect the City of Long Beach, its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions.

C. Permittee shall deliver to City certificates of insurance and the required endorsements for approval as to sufficiency and form prior to commencement of the Term. Permittee shall, at least twenty (20) days prior to expiration of such policies, furnish City with evidence of renewals. City reserves the right to require complete copies of all said policies at any time.

D. Such insurance as required herein shall not be deemed to limit Permittee's liability relating to performance under this Permit. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Permit as set forth in Section 7.A, below.

E. Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee.

6. **Waiver.** This Permit confers no rights upon Permittee other than expressly stated herein.

7. **Indemnity.**

A. **General Indemnification.**

1. Permittee shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Permittee's breach or failure to comply with any of its material obligations contained in this Permit, or (2) Permittee's, its officers, employees, agents, subcontractors, or anyone under Permittee's control, use of the Premises (collectively "Claims" or individually "Claim"). The foregoing indemnification shall not extend to any Claims arising from, attributable to, or caused by the negligence or willful misconduct of City or any Indemnified Parties.
2. In addition to Permittee's duty to indemnify, Permittee shall have a separate and wholly independent duty to defend Indemnified Parties at

Permittee's expense by its City Attorney or such other legal counsel reasonably approved by City, from and against all Claims, and shall continue this defense until the applicable Claim(s) is/are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Permittee shall be required for the duty to defend to arise. City shall promptly notify Permittee of any Claim, shall tender the defense of the Claim to Permittee, and shall cooperate in good faith and assist Permittee, as may be reasonably requested, in the defense.

3. If a court of competent jurisdiction determines that a Claim was caused by the negligence or willful misconduct of Indemnified Parties, Permittee's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of negligence or willful misconduct attributed by the court to the Indemnified Parties.
4. The provisions of this Section 7.A shall survive the expiration or termination of this Permit.

B. Hazardous Materials Indemnification.

1. Subject to applicable general indemnification provisions in Section 7.A, Permittee shall, at Permittee's sole expense and with counsel reasonably acceptable to City, indemnify, defend, and hold harmless City and City's directors, officers, employees, partners, affiliates, and agents with respect to all losses arising out of or resulting from the disruption and release of any Hazardous Material in or about the Premises, or the violation of any Environmental Law ("Environmental Claims"), by Permittee or Permittee's agents, contractors, or invitees. This indemnification includes:
 - (a) Losses attributable to diminution in the value of the Premises;
 - (b) Loss or restriction of use of rentable space on the Premises;
 - (c) Adverse effect on the marketing on or of the Premises; and
 - (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from an Environmental Claim. This indemnification shall survive the expiration or termination of this Permit.
2. Remediation Obligations. If the presence of any Hazardous Material brought onto the Premises by Permittee or Permittee's employees, agents,

contractors, or invitees results in contamination, Permittee shall promptly take all necessary actions, at Permittee's sole expense, to return the Premises to the condition that existed before the introduction of such Hazardous Material. Permittee shall first obtain City's approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in Section 7.A or 7.B.1.

3. Definition of "Hazardous Material." As used in this Section 7.B., the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Premises. Hazardous Material includes:
 - (a) Any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Sections 9601-9675);
 - (b) "Hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code Sections 6901-6992k);
 - (c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);
 - (d) Petroleum products;
 - (e) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code Sections 2011-2297g 4;
 - (f) Asbestos in any form or condition; and
 - (g) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.
4. Definition of "Environmental Law." As used in this Section 7.B., the term "Environmental Law" shall mean:
 - (a) All federal laws, statutes, and regulations meeting following criteria:
 - (1) passed by the United States Congress and
 - (2) pertaining to (a) the regulation of the interaction of humans and the natural environment

or (b) the conservation and/or management of natural or historic resources. They need not be wholly codified in the United States Code and include, but are not necessarily exhaustively, the Antiquities Act, Atomic Energy Act of 1946, Atomic Energy Act of 1954, Clean Air Act, Clean Water Act, Coastal Zone Management Act, Comprehensive Environmental Response, Compensation and Liability Act (Superfund), Emergency Planning and Community Right-to-Know Act, Endangered Species Act, Energy Policy Act of 1992, Energy Policy Act of 2005, Federal Food, Drug, and Cosmetic Act, Federal Land Policy and Management Act, Federal Insecticide, Fungicide, and Rodenticide Act, Federal Power Act, Fish and Wildlife Coordination Act, Food Quality Protection Act, Fisheries Conservation and Management Act (Magnuson-Stevens), Lacey Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Mineral Leasing Act, National Environmental Policy Act, National Forest Management Act, National Historic Preservation Act, National Park Service Organic Act, Noise Control Act, Nuclear Waste Policy Act, Ocean Dumping Act, Oil Pollution Act, Resource Conservation and Recovery Act, Rivers and Harbors Act, Safe Drinking Water Act, Surface Mining Control and Reclamation Act, Toxic Substances Control Act, Wild and Scenic Rivers Act, and Wilderness Act;

- (b) All federal judicial decisions pertaining to the above-mentioned federal laws, statutes, and regulations;
 - (c) All state laws, statutes, and regulations pertaining to (a) the regulation of the interaction of humans and the natural environment or (b) the conservation and/or management of natural or historic resources that are not preempted by federal law;
 - (d) All state judicial decisions pertaining to the above-mentioned state laws, statutes, and regulations; and
 - (e) All common law and judicial decisions pertaining to (a) the regulation of the interaction of humans and the natural environment or (b) the conservation and/or management of natural or historic resources that are not preempted by federal and state law.
8. Notices. All notices, consents, requests, demands, approvals, waivers, and other communications desired or required to be given hereunder (collectively, "notices") shall be in writing and signed by the party so giving the notice, and shall be effectively given or served: (i) on the date of personal service upon the person to whom it is directed; (ii) on the date the notice is received or rejected provided it is sent U.S. first class registered or certified mail, postage prepaid, return receipt requested; or (iii) on the date the notice is delivered by a nationally recognized courier service to the address of the person to whom it is directed provided it is sent postage prepaid to the address of the person to whom it is directed. The addresses of the parties are:

If to the City: City of Long Beach
411 W. Ocean Blvd., 10th Floor
Long Beach, CA 90802
Attn: Mary Torres
Phone: (562) 570-6846

If to Permittee: City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90755
Attention: Hannah Shin-Heydorn, City Manager

With a copy to: Best Best & Krieger, LLP
18101 Von Karman Avenue
Irvine, CA 92612
Attn: Matthew Richardson
Phone: (949) 223-1170

Either party may, from time to time, change its address by giving written notice therein in the manner outlined above.

9. **Attorneys' Fees.** In the event of any dispute between the parties hereto arising out of the terms of this Permit, the prevailing party in such dispute shall be entitled to recover from the other all costs and expenses, including reasonable attorneys' fees and court costs incurred by the prevailing party in any such dispute (whether or not such dispute is prosecuted to a final judgment or other final determination) together with all costs of enforcement and/or collection of any judgment.
10. **Governing Law.** This Permit shall be interpreted, enforced and governed by the laws of the State of California. The parties agree that any litigation concerning this Permit shall be brought in a court of competent jurisdiction within the State of California, County of Los Angeles.
11. **Amendments; Waivers.** No provisions of this Permit may be amended or modified except by an agreement in writing executed by both parties hereto. All waivers of the provisions of this Permit must be in writing and signed by the authorized representative of the waiving party.
12. **Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Permit or of any of its terms.
13. **Construction.** This Permit shall not be construed as if it had been prepared by one or the other of the City or the Permittee, but rather as if both the City and the Permittee prepared this Permit.

14. **Severability**. In the event that any one or more of the provisions contained in this Permit shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision herein, and the remainder of the provisions of this Permit shall continue in full force and effect without impairment.
15. **Counterparts**. This Permit may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF the undersigned have executed this Permit as of the date and year first set forth above.

CITY OF LONG BEACH, a California municipal corporation

By: Linda F. Tatum
Name: LINDA F. TATUM
Title: ASST CITY MANAGER

APPROVED AS TO FORM

9.1 22
CHARLES PARKINSON
By: [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

EXECUTED PURSUANT
TO SECTION 1301 OF
THE CITY CHARTER.

CITY OF SIGNAL HILL, a California municipal corporation

By: [Signature]
Name: ~~Hannah Shin-Hoyden~~ Joe Hoefgen
Title: ~~City Manager~~ Interim City Manager

APPROVED AS TO FORM:

By: [Signature]
Matthew Richardson, Interim City Attorney

Exhibit A

Depiction of Premises

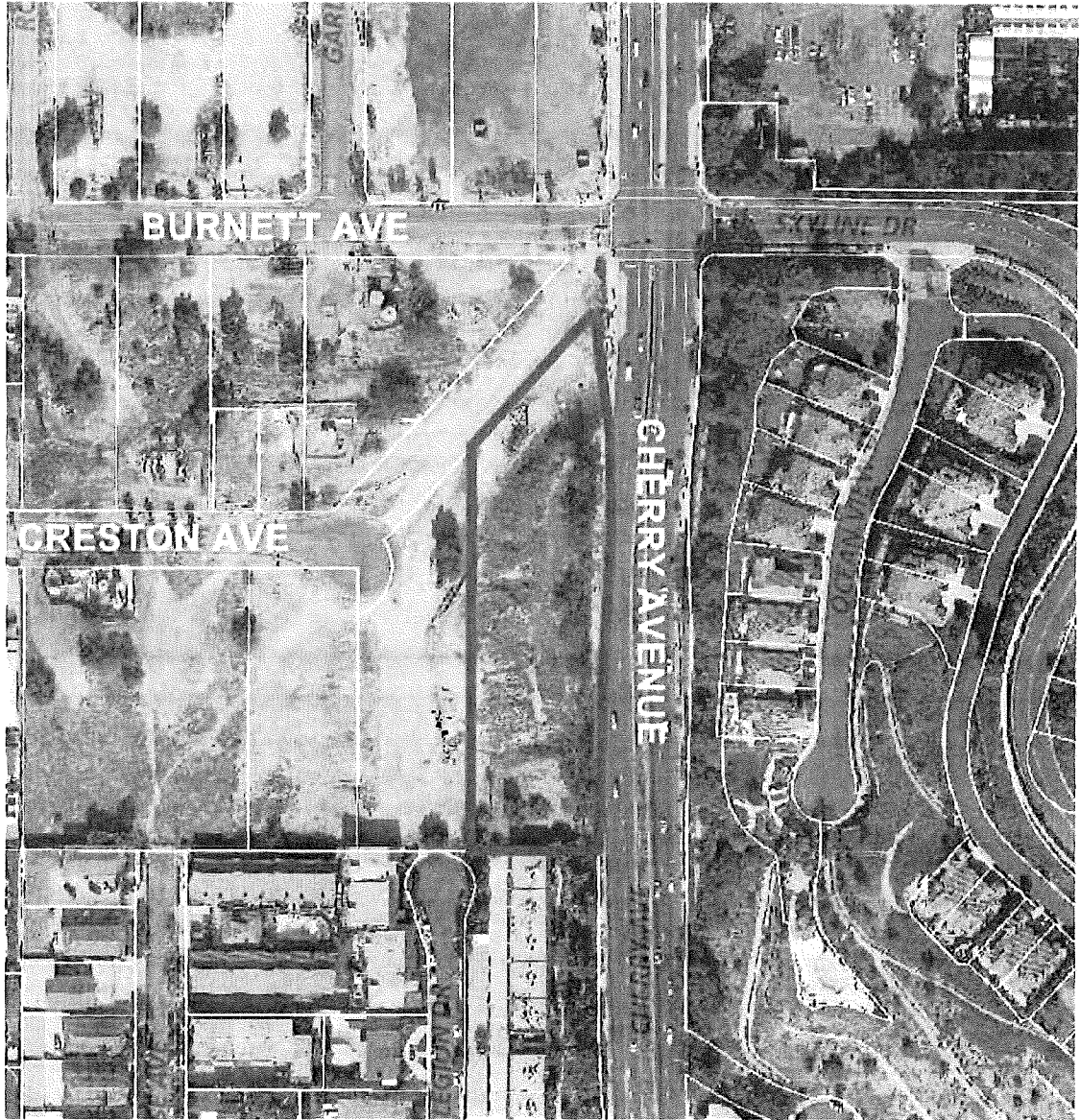


Exhibit B

Legal Description

Real property in the City of Signal Hill, County of Los Angeles, State of California, described as follows:

THAT PORTION OF BLOCKS "I" AND "J", OF THE CRESCENT HEIGHTS TRACT NO. 2, IN THE CITY OF SIGNAL HILL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK "I"; THENCE WEST ALONG THE SOUTH LINE OF SAID BLOCK, 150 FEET; THENCE NORTH, PARALLEL WITH THE EAST LINES OF SAID BLOCKS "I" AND "J", TO A POINT IN THE NORTHWESTERLY LINE OF SAID BLOCK "J";

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE TO THE NORTHEAST CORNER OF SAID BLOCK "J"; THENCE SOUTH ALONG THE EAST LINES OF SAID BLOCKS "I" AND "J", TO THE PLACE OF BEGINNING.

APN: 7215-002-271