OFFICE OF THE CITY ATTORNEY ROBERT E. SHANNON, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

PUBLIC WALKWAYS OCCUPANCY PERMIT

This Public Walkways Occupancy Permit ("Permit") is granted this 2nd day of ______, 20<u>oq</u> pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting held on June 2, 2009, to **JOSE AND ALMA ANGUIANO** ("Permittee"), whose address is 318 Pine Avenue, Long Beach, California 90802, as the operator of **OMELETTE INN** and lessee of premises at 318 Pine Avenue, Long Beach, California 90802.

Permission is granted to Permittee to occupy the public right-of-way with the following obstruction: low barrier, seven (7) tables, twenty (20) chairs, two (2) umbrellas, two (2) heaters, and three (3) planters for trees or other greenscaping at 318 Pine Avenue, 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

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following terms and conditions:

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

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

- 10. No surface improvements, included but not limited to special paving surfaces, may be removed or altered by the Permittee unless approved in advance in writing by the City Engineer.
- 11. The Permittee shall not allow cleaning chemicals, or other foreign matter to flow into the parkway tree well, and shall otherwise protect the health of adjacent street trees, and shall likewise prevent the discharge of litter, cleaning chemicals and all other foreign matter to the storm drain system.
- 12. The Permittee shall protect any parkway trees in the immediate vicinity of the permit area from damage due to the Permittee's cleaning or other activities on the public walkway. The Permittee shall not interfere with City's access to parkway trees for maintenance purposes. Any special maintenance of the parkway trees is the responsibility of the Permittee and must be performed by a qualified landscape contractor acting under a permit from City's Street Landscaping Division. City shall not be held financially responsible for damage to Permittee's sidewalk furniture or awnings occurring in the course of regular street tree maintenance.
- 13. Upon any termination of this Permit, whether by revocation or otherwise, Permittee shall remove the obstructions authorized by this Permit at the sole discretion of the City Engineer and shall otherwise restore the public street right-of-way to a condition substantially the same as existed immediately prior to the occupancy provided for by this Permit. Should Permittee fail or refuse to remove the obstructions, City may do so and, in such event, the security deposit paid by Permittee shall be applied to City's costs. Permittee shall reimburse City for any costs in excess of the security deposit. In the event of removal by City of all or any portion of the obstructions, City shall not be liable for any damage to or loss of any property of Permittee.
- 14. The following additional conditions shall apply to public walkway occupancy permits for dining or entertainment areas:

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	A.	Any	dining	or	entertainn	nent	area	shall	be	defined	by
placement of sture	dy fenc	ing or	r other	suita	able barrie	ers, n	ot to	exceed	l for	ty-eight	(48)
inches in height, as	s appro	ved by	the Ci	ty Er	ngineer. S	uch b	arriers	s may o	only	be affixe	ed to
public property with	n the pr	ior app	oroval o	f the	City Engin	neer.					

- B. All accessories to dining or entertainment uses such as plants or planter boxes, umbrellas, podiums, menu boards, musical equipment and heaters may not exceed those enumerated on Exhibit "A", and must be located inside the barrier, as shown on Exhibit "A".
- All dining and entertainment which takes place on the public right-of-way shall conform to the requirements of Chapter 8.80 of the municipal code regarding noise. Complaints regarding noise shall be logged by city staff and may be the basis for suspension, cancellation, or non-renewal of a permit.
- D. The Permittee shall be responsible for cleaning the public walkway occupied by a dining or entertainment area.
- Any permit issued within the downtown area as defined on Exhibit "B" and made a part of this Permit shall comply with all of the foregoing requirements and the following additional requirements:
- No tents or windbreaks may be used in, over, or around dining Α. or entertainment areas.
- B. Temporary banners, not exceeding the height of the barrier and attached to the barrier are permitted for a two (2) week period no more than four (4) times per year.
- C. Menu boards must be portable, located within the dining area, and must not exceed five (5) feet, six (6) inches tall. Menu boards may be either a single pole pedestal of painted metal or a board attached to the inside of the barrier, parallel to the barrier.
- D. The following are prohibited on the public walkway in the downtown area; television monitors, canopies and A-frame signs.

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

- 17. Notices of violation of any of the terms and conditions of this permit may be issued by the City of Long Beach. Within the downtown area as defined on Exhibit "B", preliminary informal notices may be issued by Downtown Long Beach Associates. The enforcement process is set forth on Exhibit "C", attached hereto, and made a part of this permit. Notwithstanding the above, City may revoke this Permit at any time by giving thirty (30) days written notice to Permittee or cancel the permit for noncompliance with its terms. Such notice shall be signed by the City Manager, postage pre-paid, and addressed to Permittee at its address provided above.
- agrees to maintain the same in a safe, clean, and orderly condition. Any and all uses made of the public right-of-way shall be at the sole risk, cost, and expense of Permittee. Permittee, by its acceptance of this Permit, agrees to indemnify, defend, save and keep City, its officers, agents, and employees free and harmless from and against any and all liability as well as from and against any and all loss, claims, demands, damages, expenses and costs of whatsoever nature arising out of or in any manner resulting,

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directly or indirectly, from Permittee's operations on or the condition, use or misuse of the public street right-of-way, including liability, claims or damages to or as a result of any structures or fixtures on the public street right-of-way or appurtenances to it.

- 19. In partial performance of this obligation, Permittee shall obtain and keep in full force and effect such public liability insurance and property damage insurance as required by the Long Beach Municipal Code.
- 20. Nothing in this Permit shall be construed to excuse compliance by Permittee with any and all of the laws and ordinances of City and State; neither shall this Permit be deemed to obviate the necessity of Permittee's obtaining such other permits or licenses as are required to conduct specific activities within the area, including but not limited to entertainment or the sale, service or consumption of alcoholic beverages.
- 21. The terms of this permit shall be enforced by the procedure set forth on Exhibit "C", attached and made a part of this permit.
- 22. In case suit shall be brought for the recovery of possession of all or any portion of the public right-of-way or because of the breach of any covenant contained in this Permit to be kept and performed on the part of Permittee, Permittee shall pay to City reasonable attorneys' fees which shall be fixed by the court.
- 23. Permittee shall not assign this Permit, or any interest in it, nor shall this Permit, or any interest in it, be subject to transfer or assignment by order of any court. Any such transfer or assignment shall not create any right whatsoever in the transferee or assignees and shall entitle the City Manager, at his discretion, to terminate this Permit.

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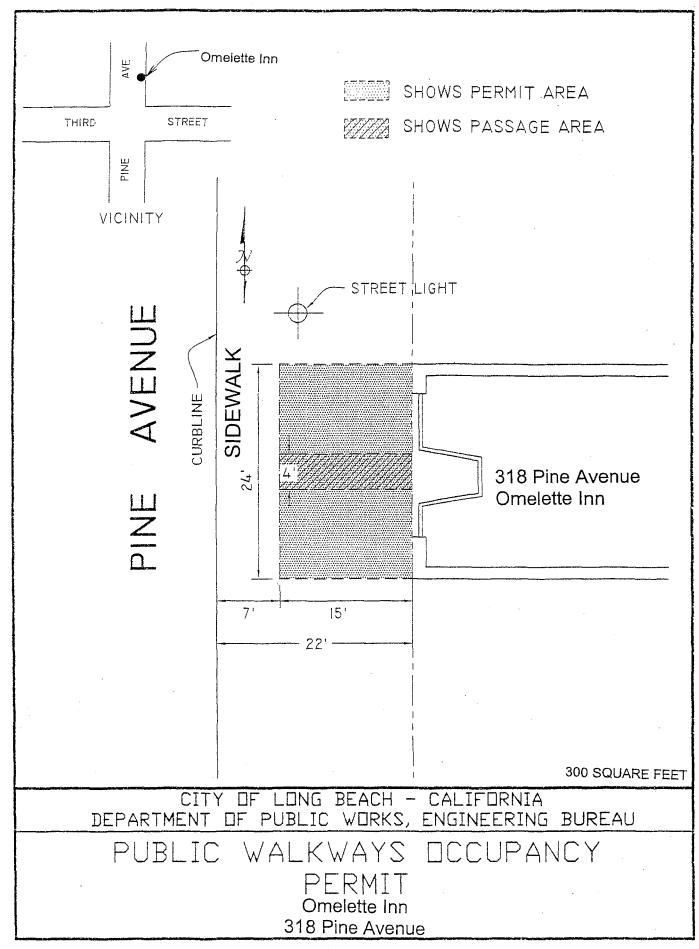
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The acceptance of this Pern	nit by Permittee shall be endorsed on this
·	nittee of all of the terms and conditions of this
•	nply with it. Permittee further acknowledges
that Permittee is aware of the requiremer	nts of Long Beach Municipal Code Chapter
·	activities hereunder in compliance with such
chapter.	·
<u>4</u> 2 2009 <u>4</u> 2 2009 <u>2009</u>	JOSE AND ALMA ANGUIANO By Jose Anguiano By Anguiano Alma Anguiano
	"PERMITTEE"
July Z , 2009	CITY OF LONG BEACH, a municipal corporation By City Manager EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
Approved as to form this	n day of <u>June</u> , 2009.
	By Deputy City Attorney



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

Resta	urant: Omelette Inn Permitee: José & Hma Angulano
Addre	ess: 318 Pine Ave Telephone: 562 437-5625
X_	Tables number:
X	Chairs number: 20
2	Umbrella(s) height & number:
2	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:
2	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 fo	llowing are prohibited: • canopies (ground supported) • television monitors
Permit	tee signature: Date: 9-15-08
Print n	ame here: Alma Anaviano

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

EXHIBIT A Page 2 of 2

OFFICE OF THE CITY ATTORNEY ROBERT E. SHANNON, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

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; 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.

OFFICE OF THE CITY ATTORNEY ROBERT E. SHANNON, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

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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 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.

CITY OF LONG BEACH EVIDENCE OF RENEWAL PUBLIC WALKWAYS OCCUPANCY PERMIT

Permittee:

Omellette Inn

Business Name Address:

Omellette Inn 318 Pine

Long Beach, CA 90802

Responsible Individual:

Alma Anguiano

The attached Public Walkways Occupancy Permit is renewed for an additional oneyear term. All other terms of the permit remain unchanged, and failure by the Permittee to comply with those requirements, including but not limited to maintaining the required insurance, shall be grounds for immediate revocation of the permit. This renewal will expire **July 2, 2014.**

This permit renewal is non-transferable. A new application must be submitted for any change in ownership, change in business name, or business form, or any change in the use of the public walkway.

Ву:

Ara Maloyan

Director of Public Works

Date:

11/27/13



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYY) 08/21/2013

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(les) 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).

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TELEPHONE: (502

CITY OF LONG BEACH

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

333 West Ocean Boulevard, 10th Floor • Long Beach, California 80802 • (562) 570-6975 CFAX (662) 570-6976

General Liability Endorsement - Public Walkways

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