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C. Public Walkway. On preschool days, during scheduled hours of operation, Permittee shall have exclusive use of the public walkway between the preschool building and the storage sheds to protect and control the preschool's children. Permittee may erect temporary fencing during each preschool day and must remove the temporary fencing at the close of each preschool day. On preschool days, during hours of operation, the public shall be directed around the premises to an Americans with Disability Act (ADA) accessible walkway to access the Bayshore area.

D. Bayshore Playground. Permittee shall have non-exclusive use of the Bayshore Playground on preschool days during hours of operation and while the playground is open to the public.

E. Bayshore Roller Hockey Rink. Permittee shall have non-exclusive use of the nearby Bayshore Roller Hockey Rink, as approved by the Director, when the rink is not being used by the City or otherwise permitted.

F. Permittee acknowledges and agrees that, by this Permit, Permittee does not acquire any right, title, or interest in the Permit Area, including the right to possession and control, but acquires only the mere right to use. Permittee acknowledges and agrees that this Permit shall not be deemed a lease for any purpose.

2. TERM.

A. The term of this Permit shall commence at midnight on September 1, 2018, and shall terminate at 11:59 p.m. on June 10, 2023, unless sooner terminated as provided in this Permit. The Permit term shall observe the Long Beach Unified School District's traditional school year, and will begin one (1) week after the start of the school year, and conclude one (1) week before the end of the school year. The term may be extended for one (1) additional five-year period at the discretion of the City Manager.

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1 B. Permittee agrees that nothing contained in this Permit creates  
2 any right in Permittee for any relocation assistance or payment pursuant to the  
3 provisions of Title 1, Division 7, Chapter 16 of the California Government Code from  
4 the City on expiration or revocation of this Permit.

5 3. TERMINATION. Either party shall have the right to terminate this  
6 Permit by giving thirty (30) calendar days prior written notice to the other party.

7 4. PERMIT FEE. Permittee shall pay to the City four hundred fifty dollars  
8 (\$450) in annual rent, due by September 30th of each Permit year. The annual rent will  
9 cover the cost of City-provided utilities and basic maintenance of all Permit locations. The  
10 Permit fee may increase during the Permit term, as authorized through the City's normal  
11 budget process.

12 5. UTILITIES. City shall provide and pay for all utilities, including  
13 telephone, water, gas, and electricity. No internet service shall be provided nor paid for by  
14 the City.

15 6. MAINTENANCE. City shall provide limited basic repairs to keep the  
16 Permit Area habitable, Permittee is responsible for the maintenance of its storage sheds.

17 7. IMPROVEMENTS. Permittee, at its sole cost and expense, may  
18 install, erect, or make improvements or repairs to the Permit Area, upon prior written  
19 approval by the Director. All approved improvements shall become the property of the  
20 City, unless otherwise stated in writing by the Director.

21 8. PARKING. Public metered parking is available on a first-come, first-  
22 served basis. Metered parking is also available to preschool employees, board members,  
23 parents, and visitors. City parking passes will not be issued unless approved in writing by  
24 the Director.

25 9. FINGERPRINTING. Pursuant to City policies regarding adult activity  
26 with children in City parks, Permittee shall ensure that all teachers, parents or guardians,  
27 and volunteer participants are fingerprinted through Live Scan, as a part of the background  
28 check process, prior to teaching and/or interacting with children.

1                   10.    INSURANCE.

2                   A.     As a condition precedent to the effectiveness of this Permit,  
3                   Permittee shall procure and maintain at Permittee's expense for the duration of the  
4                   Permit from an insurance company that is admitted to write insurance in California  
5                   or from authorized non-admitted insurance companies that have ratings of or  
6                   equivalent to A:VIII by A.M. Best Company:

7                   i.     Commercial general liability insurance equivalent in  
8                   scope to ISO form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less  
9                   than One Million Dollars (\$1,000,000.00) per occurrence and Two Million  
10                  Dollars (\$2,000,000.00) general aggregate. Such coverage shall include but  
11                  not be limited to broad form contractual liability, cross liability, independent  
12                  contractors liability, and products and completed operations liability. The  
13                  City, its officials, employees and agents shall be named as additional  
14                  insureds by endorsement on the City's endorsement form or on an  
15                  endorsement equivalent in scope to ISO form CG 20 26 11 85, and this  
16                  insurance shall contain no special limitations on the scope of protection given  
17                  to the City, its officials, employees and commissions.

18                  ii.    If applicable, workers' compensation insurance as  
19                  required by the California Labor Code and employer's liability insurance in an  
20                  amount not less than One Million Dollars (\$1,000,000.00) per accident or  
21                  occupational illness.

22                  iii.   If applicable, "All Risk" property insurance in an amount  
23                  sufficient to cover the full replacement value of Permittee's personal property  
24                  at the Permit Area.

25                  iv.   If applicable, commercial automobile liability insurance  
26                  equivalent in scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 (Any  
27                  Auto), in an amount not less than Five Hundred Thousand Dollars  
28                  (\$500,000.00) combined single limit per accident.

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B. Any self-insurance program shall protect the City, 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. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City, its officials, employees and agents.

C. Permittee shall require that all contractors and subcontractors which Permittee uses in connection with this Permit maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

D. Prior to the start of the term of this Permit, Permittee shall deliver to City certificates of insurance and required endorsements, including any insurance required of Permittee's contractors and subcontractors, for approval as to sufficiency and form. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall, at least thirty (30) days prior to expiration of the insurance required hereunder, furnish to the City certificates of insurance and endorsements evidencing renewal of such insurance. City reserves the right to require complete certified copies of all policies of Permittee or Permittee's contractors or subcontractors, at any time. Permittee shall make available to the City all books, records and other information relating to the insurance coverage required herein during normal business hours.

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

F. This section shall not be construed or deemed as a limitation on liability relating to Permittee hereunder or as full performance of or compliance

1 with the indemnification provisions herein.

2 11. HAZARDOUS MATERIALS. No goods, merchandise, supplies,  
3 personal property, materials, or items of any kind shall be kept, stored, or sold in, on or at  
4 the Permit Area which are in any way explosive or hazardous. Permittee shall comply with  
5 California Health and Safety Code Section 25359.7 or its successor statute regarding  
6 notice to the City on discovery by Permittee of the presence or suspected presence of any  
7 hazardous substance in, on or at the Permit Area.

8 12. NO ASSIGNMENT. Permittee shall not assign or transfer this Permit  
9 or any interest herein, nor sublease the Permit Area or any part thereof, and any attempted  
10 transfer, assignment, or sublease shall result in immediate revocation of this Permit.  
11 Neither this Permit nor any interest in it shall be subject to transfer by attachment,  
12 execution, proceedings in solvency or bankruptcy (voluntary or involuntary), or  
13 receivership. Any attempted assignment or transfer shall be a default and shall be voided  
14 and shall convey no interest.

15 13. LICENSES, PERMITS, AND TAXES. Permittee shall obtain and pay  
16 for all licenses and permits required for its use of the Permit Area and operations thereon.  
17 In addition, Permittee shall promptly pay when due all taxes levied on its personal property  
18 in, on or at the Permit Area and any possessory interest taxes attributable to this Permit.

19 14. CONTROL OF PERMIT AREA. The City Manager shall have absolute  
20 and full control of the Permit Area during this Permit. If necessary for the health, welfare  
21 or safety of the general public, or as a result of the expiration or revocation of this Permit,  
22 the City Manager shall have the right to enter the Permit Area and take possession thereof  
23 immediately. The City Manager reserves the right to enter the Permit Area at any and all  
24 reasonable times including the times and days of Permittee's use. City reserves the right  
25 to do any work at the Permit Area for the preservation, operation and maintenance of the  
26 Permit Area. City will inform Permittee when such work is going to be done if it impacts  
27 Permittee's use.

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1           15.    COMPLIANCE. Permittee shall comply with all applicable laws, rules,  
2 regulations, and directives of the City Manager relating to the use of the Permit Area.  
3 Failure to do so may result in the immediate revocation of this Permit.

4           16.    SIGNS AND ADVERTISEMENTS. All signs, advertising or  
5 promotional material placed in, on or at the Permit Area shall be approved, in advance, in  
6 writing by the City Manager. Permittee shall pay the cost of production, maintenance and  
7 repair of said signs, advertising or promotional material.

8           17.    NONDISCRIMINATION.

9           A.     During its use of the Permit Area and operations, Permittee and  
10 its employees shall not discriminate on the basis of race, religion, national origin,  
11 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or  
12 disability by refusing to furnish such person any accommodation, facility, service, or  
13 privilege offered to or enjoyed by the general public. Nor shall Permittee publicize  
14 its operations in any manner that would directly or inferentially reflect on or question  
15 the acceptability of the patronage of any person on any of these bases.

16           B.     Permittee shall not discriminate against any employee or  
17 applicant for employment on any of these bases. Permittee shall take affirmative  
18 action to ensure that applicants are employed and that employees are treated  
19 without regard to any of said bases. Such action shall include but not be limited to  
20 employment upgrading, demotion, transfer, recruitment or recruitment advertising,  
21 layoff or termination, rates of pay or other forms of compensation, and selection for  
22 training, including apprenticeship.

23           18.    HEALTH AND SAFETY. Permittee shall correct safety deficiencies  
24 and violations of safety practices immediately and shall cooperate fully with the City  
25 Manager in the investigation of accidents occurring in, on or at the Permit Area. In the  
26 event of injury to a patron or customer, Permittee shall see that the injured person receives  
27 prompt and qualified medical attention. If Permittee fails to correct unsafe or unhealthy  
28 conditions which have led or, in the opinion of the City, could lead to injury, the City

1 Manager may immediately revoke this Permit.

2 19. DEFAULT.

3 A. If Permittee fails or refuses to comply with any term or condition  
4 of this Permit after notice of such failure or refusal from the City Manager, then the  
5 City Manager may immediately revoke this Permit. The acceptance of all or part of  
6 the payment of any Permit Fee after default shall not be deemed a waiver of any  
7 right to revoke this Permit on account of such default. Any waiver by the City of a  
8 default shall be in writing, and shall not be construed as or constitute a waiver of  
9 any subsequent default of the same or any other term or condition of this Permit.

10 B. Failure to pay, when due, any fees, charges, assessments, or  
11 taxes due the City including but not limited to permit fees, business license fees,  
12 and charges for refuse service, gas, water, sewer or other utility provided by City  
13 shall be a default under this Permit.

14 20. NO WAIVER. The failure or delay of the City to insist on strict  
15 compliance with any provision of this Permit shall not be deemed a waiver of any right or  
16 remedy that City may have and shall not be deemed a waiver of any subsequent or other  
17 failure to comply with any provision of this Permit. The receipt and acceptance of all or a  
18 part of the payment of a delinquent Permit Fee shall constitute only a waiver of timely  
19 payment for the particular Permit Fee payment involved and shall not constitute a waiver  
20 of any other failure to comply.

21 21. CLAIMS. The City, its officials, employees, and commissions shall not  
22 be liable for and Permittee hereby waives all claims against the City, its commissions,  
23 officials and employees for loss, theft, or damage to equipment, furniture, trade fixtures,  
24 furnishings, records, and other personal property in, on or at the Permit Area, for loss or  
25 damage to Permittee's business, or injury to or death of persons in, on or at the Permit  
26 Area from any cause except to the extent caused by the gross negligence or willful  
27 misconduct of the City, its commissions, officials and employees.

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1           22. ABANDONMENT. If Permittee abandons the Permit Area or  
2 discontinues use thereof by operation of law or otherwise, title to any personal property  
3 belonging to Permittee and left in, on or at the Permit Area forty-five (45) days after  
4 abandonment or discontinuance of use shall be deemed to have been transferred to the  
5 City. The City shall thereafter have the right to remove and to dispose of said property  
6 without liability to Permittee or to any person claiming under Permittee, and shall have no  
7 duty to account therefore. Permittee hereby names the City Manager as Permittee's  
8 attorney in fact to execute and deliver such documents or instruments as may be  
9 reasonably required to dispose of such property and transfer title thereto.

10           23. REVOCAION. In addition to other provisions herein providing for  
11 immediate revocation, the City Manager may revoke this Permit immediately (a) if the City  
12 Manager determines that Permittee has violated or failed to comply with any provision of  
13 this Permit unless another remedy is stated herein; (b) if the City Manager has evidence of  
14 misrepresentation or fraud by Permittee; (c) if the City has evidence that Permittee acted  
15 unfairly or in bad faith in dealing with the public; or (d) if necessary for the health, welfare  
16 or safety of the public. On revocation, Permittee shall immediately cease its use of the  
17 Permit Area and its operations thereunder and remove its property from the Permit Area.

18           24. INDEMNIFICATION.

19           A. Permittee shall indemnify, protect and hold harmless City, its  
20 Boards, Commissions, and their officials, employees and agents ("Indemnified  
21 Parties"), from and against any and all liability, claims, demands, damage, loss,  
22 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
23 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
24 in connection with (1) Permittee's breach or failure to comply with any of its  
25 obligations contained in this Permit, or (2) negligent or willful acts, errors, omissions  
26 or misrepresentations committed by Permittee, its officers, employees, agents,  
27 subcontractors, or anyone under Permittee's control, in the performance of work or  
28 services under this Permit (collectively "Claims" or individually "Claim").

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B. 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 legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims 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 notify Permittee of any Claim, shall tender the defense of the Claim to Permittee, and shall assist Permittee, as may be reasonably requested, in the defense.

25. NOTICE. Notice shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to the City of Long Beach at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager, and to Permittee at the address first stated above. Change of address shall be given in the same manner as described in this Section for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever is applicable and occurs first.

26. POSSESSORY INTEREST. This Permit may create a possessory interest subject to taxation and, if so, Permittee shall pay said tax prior to delinquency. Evidence of payment shall be given to City upon request.

27. MISCELLANEOUS. This Permit shall be governed by and construed in accordance with the laws of the State of California. This Permit constitutes the entire understanding between the City and Permittee and supersedes all other agreements, oral or written, with respect to the subject matter herein. Revocation or expiration of this Permit shall not affect rights or liability that accrued hereunder prior to such revocation or expiration. This Permit shall not be construed or interpreted against either the City or Permittee as the drafter. This Permit is not intended or entered for the purpose of creating any benefit or right for any person or entity that is not a signatory to this Permit.

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

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Permittee hereby accepts and agrees to abide by the above terms and conditions.

BAY SHORE NURSERY SCHOOL, a  
California nonprofit corporation

\_\_\_\_\_, 2018

By: \_\_\_\_\_  
Name Conal Sisto  
Title Director

\_\_\_\_\_, 2018

By: \_\_\_\_\_  
Name Sarah Scott  
Title Treasurer

"Permittee"

CITY OF LONG BEACH, a municipal  
corporation

May 22, 2018

By: T. Modica  
City Manager

"City"

Tom Modica  
Assistant City Manager

This Revocable Use Permit is approved ~~EXECUTED~~ ~~FOR~~ ~~FORWARD~~ ~~ON~~

5/14, 2018.

TO SECTION 301 OF  
THE CITY CHARTER

CHARLES PARKIN, City Attorney

By: Charles Parkin  
Deputy



Attachment  
Bayshore Nursery Inc.  
Alamitos Bay, Long Beach, CA

