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RIGHT OF ENTRY PERMIT

30286

THIS RIGHT OF ENTRY PERMIT is issued and granted as of August 14, 2007 for reference purposes only, pursuant to a minute order of the City Council of the City of Long Beach at its meeting on August 14, 2007, by the CITY OF LONG BEACH, a municipal corporation ("City") to the PUBLIC CORPORATION FOR THE ARTS, doing business as ARTS COUNCIL OF LONG BEACH, a California nonprofit corporation ("Permittee").

1. Access. City grants to Permittee, its contractors, agents and employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") a nonexclusive right to enter the City-owned property described in Exhibit "A" attached to this Permit and incorporated by reference ("City-owned Property") for the purpose and to the extent reasonably necessary for Permittee to begin construction of a public art exhibit displaying a solar system at Loma Vista Park at 1173 Loma Vista in the City of Long Beach. City acknowledges that the permission granted by this Permit may include placing, using and leaving equipment and materials provided, however, that the location of equipment and materials shall first be approved by the City Manager. Permittee shall use its best efforts to limit the entry of Permittee Parties to the space and to the extent necessary to meet the purposes stated in this Permit. Entry by Permittee Parties and storage of equipment and supplies shall not create a nuisance or impede the use of the park by the public.

2. Time of Use. Permittee Parties shall enter City-owned property in accordance with this Permit, during the hours of 7 a.m. and 5 p.m., Monday through Friday.

3. Duration of Permit. A. Permission to enter shall begin on September 1, 2007 and shall end on January 31, 2008.

B. Within fifteen (15) days after expiration or revocation of this Permit, Permittee shall cease entry and shall cause all Permittee Parties to cease entry on the City-owned Property, shall remove all equipment, supplies, and personal property and

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

1 shall leave the City-owned Property in a clean, neat and safe condition. Any supplies,
2 equipment, and personal property, which are not removed within the 15-day period, shall
3 become the property of the City without payment by or liability of any kind on the part of
4 the City.

5 4. Installation Limitations/Requirements. Prior to entering onto City-owned
6 property, contact Christine Sandburg, Superintendent of Grounds Maintenance at (562)
7 570-4879 or (562) 570-4896 to schedule a pre-construction meeting. Permittee Parties
8 are required to complete a dig alert prior to beginning any construction. Any construction
9 requiring the removal of/or damage to turf area must be repaired at the sole cost to the
10 Permittee, including but not limited to grading and seeding. The Grounds Maintenance
11 Superintendent must approve any modifications to the irrigation system. All costs
12 associated with modification to the irrigation system shall be the responsibility of the
13 Permittee. The area must be kept clear of all construction/installation debris at the end of
14 each day. The City will not provide a temporary storage. Permittee is responsible for
15 storing all materials needed during construction/installation.

16 5. Insurance. As a condition precedent to the effectiveness of this Permit,
17 Permittee shall provide evidence of insurance from an insurer acceptable to the City
18 equal in scope to the following insurance coverage:

19 (a) Commercial general liability insurance equivalent in scope to ISO form
20 CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than \$1,000,000 per
21 occurrence and \$2,000,000 general aggregate. The coverage shall include but not be
22 limited to broad form contractual liability, cross liability, independent contractor's liability,
23 and products and completed operations liability. The City, its officers, employees and
24 agents shall be named as additional insureds by endorsement on the City's endorsement
25 form or on an endorsement equivalent in scope to ISO form CG 20 26 11 85, and this
26 insurance shall contain no special limitations on the scope of protection given to the City,
27 its officers, employees and agents.

28 (b) Workers' compensation insurance as required by the California Labor

1 Code and employer's liability insurance in an amount not less than \$1,000,000 per
2 accident or illness.

3 (c) Any self-insurance program, self-insured retention, or deductible must
4 be separately approved in writing by City's Risk Manager or designee and shall protect
5 the City, its officials, employees and agents in the same manner and to the same extent
6 as they would have been protected had the policy or policies not contained retention or
7 deductible provisions. Each insurance policy shall be endorsed to state that coverage
8 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written
9 notice to City, and shall be primary and not contributing to any other insurance or self-
10 insurance maintained by the City. Permittee shall notify the City within five (5) days after
11 any insurance required in this Permit has been voided by the insurer or canceled by
12 Permittee.

13 Permittee shall require that all Permittee Parties maintain insurance in
14 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
15 designee.

16 Prior to entry on City-owned Property, Permittee shall deliver to City
17 certificates of insurance or self-insurance and required endorsements, including any
18 insurance required by Permittee Parties, for approval as to sufficiency and form. The
19 certificates and endorsements shall contain the original signature of a person authorized
20 by that insurer to bind coverage on its behalf. In addition, Permittee shall at least thirty
21 (30) days prior to expiration of this insurance furnish to the City evidence of renewal of
22 the insurance. City reserves the right to require complete certified copies of all policies of
23 insurance at any time. Permittee and Permittee Parties shall make available to the City,
24 during normal business hours, all books, records and other information relating to the
25 insurance required in this Permit.

26 Any modification or waiver of these insurance requirements shall only be
27 made by the City's Risk Manager or designee, in writing. The procuring or existence of
28 insurance shall not be construed or deemed as a limitation on liability or as full

1 performance with the indemnification provisions of this Permit.

2 Notwithstanding any other provision of this Permit, if Permittee or a
3 Permittee Party fails to comply with this Section, the City may immediately revoke this
4 Permit and the permission granted by this Permit.

5 6. Permittee's indemnification of City. Permittee shall indemnify, defend
6 and hold the City, its officers and employees harmless from all liability, loss, damage,
7 claims (including claims under Section 6 for which Permittee has agreed that the City is
8 not liable), demands, penalties, fines, proceedings, causes of action, taxes,
9 assessments, costs, and expenses (including attorney's fees and experts' fees) arising
10 from the right to enter granted by this Permit and the activities of Permittee Parties on the
11 City-owned Property under this Permit. This indemnity shall survive the expiration or
12 revocation of this Permit.

13 7. Non-responsibility of City. City, its officers and employees shall not be
14 responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism or any
15 other cause to the supplies, equipment or other personal property of Permittee Parties in
16 or on the City-owned Property, except to the extent caused by the gross negligence of
17 the City, its officers or employees. By executing this Permit and in consideration for
18 being allowed entry to the City-owned Property, Permittee waives all claims against the
19 City, its officers or employees for such loss or damage.

20 8. No Title. Permittee and City acknowledge and agree that, by this
21 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
22 Property, including but not limited to any leasehold interest. Permittee shall not allow the
23 City-owned Property to be used by anyone other than a Permittee Party or for any other
24 purpose than stated in this Permit. Notwithstanding any language to the contrary in this
25 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then
26 Permittee waives any right of redemption under any existing or future law in the event
27 that the City removes it from the City-owned Property and agrees that, if the manner or
28 method used by the City in ending any right held by Permittee under this Permit gives to

1 Permittee a cause of action similar to or based on damages that would otherwise arise in
2 connection with unlawful detainer, then the total amount of damages to which Permittee
3 would be entitled in such action shall be One Dollar. Permittee agrees that this Section
4 may be filed in such action and that, when so filed, it shall be a stipulation by Permittee
5 fixing the total damages to which Permittee is entitled in such action.

6 9. No Assignment. Permittee shall not assign this Permit or the permission
7 granted by this Permit. Neither this Permit nor any interest in it shall be subject to
8 transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
9 receivership. Any attempted assignment or other transfer that is not approved by the City
10 Manager shall be void and confer no right of entry on the purported assignee or
11 transferee.

12 10. Condition after Entry. After the entry of any Permittee Party on the
13 City-owned Property, Permittee shall return the City-owned Property in as good condition
14 or better condition as the City-owned Property was in prior to such entry, reasonable
15 wear and tear excepted.

16 11. Notice. Any notice or approval given under this Permit shall be in
17 writing and personally delivered or deposited in the U.S. Postal Service, registered or
18 certified, return receipt, to the City at 333 West Ocean Boulevard, Long Beach, CA 90802
19 Attn: City Manager. Notice shall be deemed given on the date personal delivery is made
20 or on the date shown on the return receipt, whichever first occurs.

21 12. Consideration. This Permit is granted in consideration for Permittee's
22 improvement to Loma Vista Park at no cost to the City.

23 13. Possessory Interest Tax. Permittee acknowledges that this Permit may
24 create a possessory interest subject to possessory interest taxes. Permittee shall pay,
25 prior to delinquency, all taxes on such possessory interest and deliver satisfactory
26 evidence of payment to the City on request.

27 14. Improvements. Permittee Parties shall not install, construct, erect or
28 maintain any structure or improvements on the City-owned Property except as described

1 in this Permit. At the expiration or revocation of this Permit, all improvements to City-
2 owned Property made pursuant to this Permit shall become the sole property of the City,
3 at no charge.

4 15. No Limitations on City. The Permit shall not limit the City's right or
5 power to construct, erect, build, demolish, move or otherwise modify any structures,
6 buildings, landscaping or any other type of improvement on, over, in, or under the City-
7 owned Property.

8 16. No Release. The expiration or revocation of this Permit shall not
9 release either party from any liability or obligation which accrued prior to such expiration
10 or revocation.

11 17. Utilities and Security. The City shall not have any obligation to
12 Permittee to provide utilities, clean-up, or security on the City-owned Property with
13 respect to the right of entry granted by this Permit.

14 18. Nondiscrimination. In exercising its right of entry and use of the City-
15 owned Property, Permittee shall not discriminate on the basis of race, color, religion,
16 national origin, sex, sexual orientation, age, HIV status, disability or handicap.

17 19. Compliance with Laws. Permittee Parties shall comply with all
18 applicable laws, rules, regulations and ordinances with respect to their activities on the
19 City-owned Property.

20 20. Miscellaneous. A. This Permit shall be governed by and construed in
21 accordance with the laws of the State of California.

22 B. If any part of this Permit shall be held by a court of competent
23 jurisdiction to be invalid, void or unenforceable, then the remainder of the Permit shall
24 remain in full force and effect and shall not be affected, impaired or invalidated.

25 C. This Permit may only be amended by a written agreement, signed by
26 the City and Permittee after authorization by City's City Council.

27 D. This Permit contains the entire understanding of the City and Permittee
28 and supersedes all other agreements, oral or written, with respect to the subject matter of

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1 this Permit.

2 E. On the expiration or revocation of this Permit, Permittee agrees to and
3 shall execute such documents, in recordable form if so requested, as the City deems
4 reasonably necessary to end the Permit and remove the Permit as an encumbrance on
5 the City-owned Property.

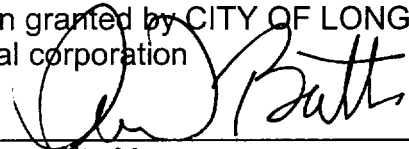
6 F. In any action or proceeding to enforce or interpret or revoke this Permit,
7 the prevailing party shall be entitled to attorney's fees and costs.

8 G. The failure or delay of the City to insist on strict compliance with the
9 provisions of this Permit shall not be deemed a waiver of any right or remedy that City
10 may have and shall not be deemed a waiver of any subsequent or other failure to comply
11 with any provision of this Permit.

12 H. This Permit is not intended or entered for the purpose of creating any
13 benefit or right for any person or entity that is not a signatory or a Permittee Party.

14 Permission granted by CITY OF LONG BEACH,
15 a municipal corporation

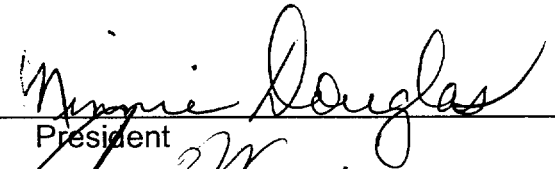
16 Dated: 9/17, 2007

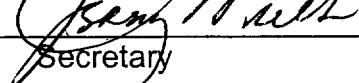
16 By: 
17 City Manager

18 "City"

19 Terms of Permit accepted by PUBLIC CORPORATION
20 FOR THE ARTS dba, ARTS COUNCIL OF LONG
21 BEACH

21 Dated: Sept 5, 2007


21 By: 
22 President

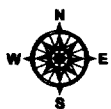
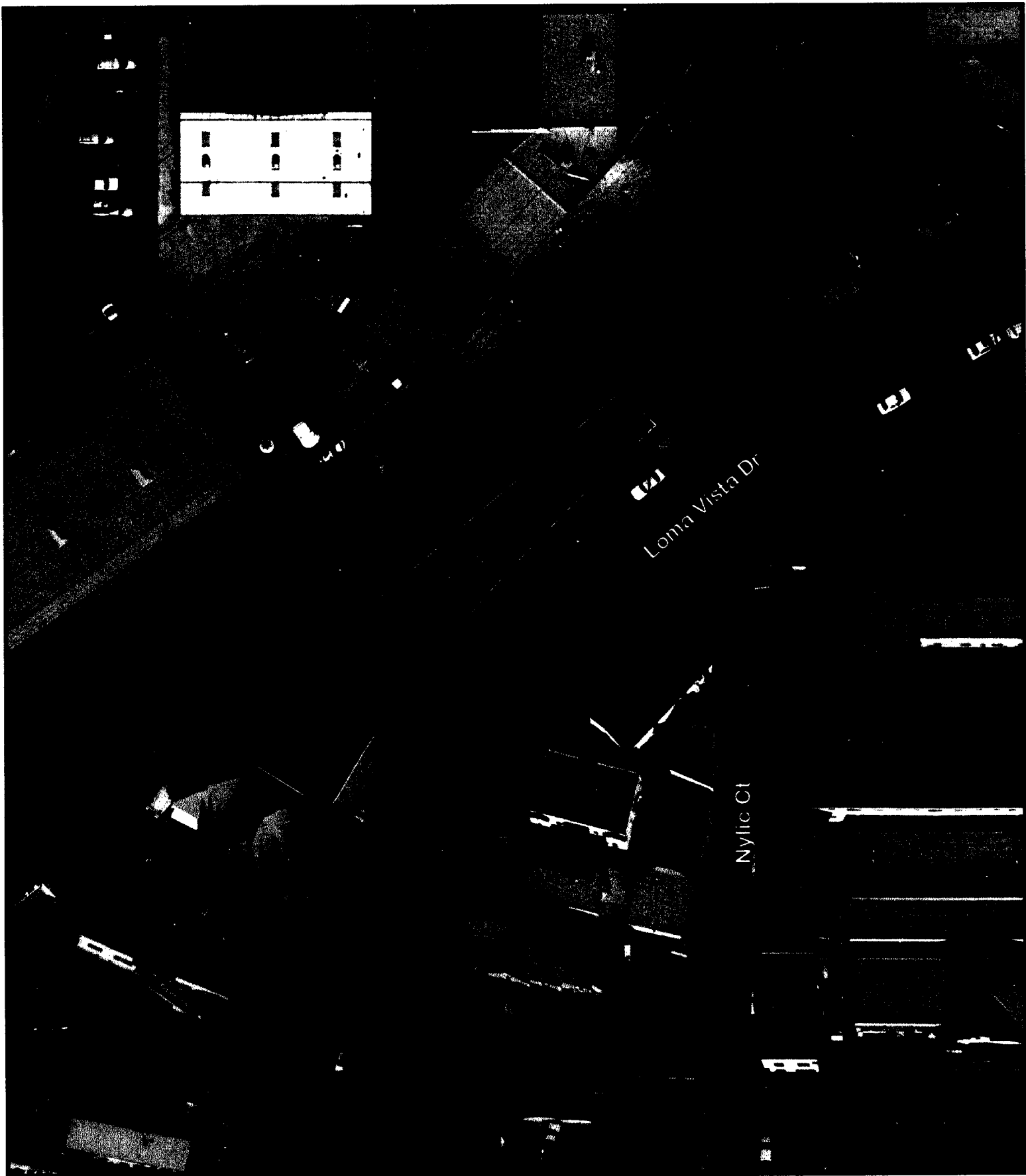
23 By: 
24 Secretary

25 "Permittee"

26 APPROVAL AS TO FORM:

27 Dated: September 11, 2007

27 By: 
28 Deputy City Attorney



Loma Vista Pocket Park
Right of Entry
Arts Council of Long Beach

