

RIGHT OF ENTRY PERMIT

P - 00411

THIS RIGHT OF ENTRY PERMIT is made and entered, as of December 21, 2022 for reference purposes only, pursuant to authorization by the PARKS AND RECREATION COMMISSION of the City of Long Beach ("Commission") at its meeting on November 17, 2022, by and between TD SPORTS, INC., dba SPORT COURT OF SOUTHERN CALIFORNIA, a Delaware Corporation ("Permittee"), whose address is 21 West Easy Street, #107, Simi Valley, California 93065 and the CITY OF LONG BEACH, a municipal corporation, by and through its Department of Parks, Recreation & Marine ("City").

1. ACCESS. City grants to Permittee, its contractors, agents, and employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") the non-exclusive right to enter City-owned property described in Exhibit "A" attached to this Permit and incorporated by reference ("City-owned Property") solely for the purpose for the improvement to two futsal courts at DeForest Park, which consists of removing existing sport tiles on court, filling in cracks, asphalt repair, acrylic resurfacing, and logos and striping on two existing futsal courts with branded artwork representing sponsors, Los Angeles Galaxy and Herbalife at DeForest Park. Anything brought on site for the purpose of making field improvements such as: recycled materials, structures, storage unit, building materials, etc., shall be the responsibility of Permittee and shall be removed upon the completion of the improvement or at the termination of the Permit, whichever comes first. Entry by the Permittee shall not create a nuisance or impede the use of DeForest Park or the existing parking lot by the public.

2. TIME OF USE. Permittee Parties shall enter City-owned Property in during Park hours, Monday-Sunday from dawn to dusk, or after the last permitted activity has ended. Should Permittee hold an event past normal Park hours, depending on the scope of the event, the Permittee shall pull a separate permit through the Department Reservation's Office or the City's Special Events and Filming Office, with a request that the

1 fees be waived.

2 3. DURATION OF PERMIT.

3 A. Permission to enter shall begin on December 1, 2022, and
4 continue through November 30, 2023, without the option to renew, as the project is
5 anticipated to be completed within the one-year term.

6 B. Within fifteen (15) days of revocation of this Permit, Permittee
7 shall cease entry and shall cause all Permittee Parties to cease entry on the City-
8 owned Property, shall remove all equipment, supplies, and personal property and
9 shall leave the City-owned Property in a clean, neat, and safe condition. Any
10 supplies, equipment, and personal property which are not removed within the fifteen
11 (15) day period shall become the property of the City without payment by or liability
12 of any kind on the part of the City.

13 4. INSURANCE. As a condition precedent to the effectiveness of this
14 Permit, Permittee shall provide evidence of insurance equal to the following insurance
15 coverage:

16 A. Commercial general liability insurance equivalent in scope to
17 ISO form CG 00 01 10 93 in an amount not less than \$1,000,000 per occurrence or
18 \$2,000,000 general aggregate. The coverage shall include but not be limited to
19 broad form contractual liability, cross liability, independent contractors liability, and
20 products and completed operations liability. The City, its officers, employees and
21 agents shall be named as additional insureds by endorsement on the City's
22 endorsement form or on an endorsement equivalent in scope to ISO form CG 20 26
23 11 85, and this insurance shall contain no special limitations on the scope of
24 protection given to the City, its officers, employees and agents.

25 B. Workers' compensation insurance as required by the California
26 Labor Code and employer's liability insurance in an amount not less than
27 \$1,000,000 per accident.

28 C. Commercial automobile liability insurance (equivalent in scope

1 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not
2 less than \$500,000 combined single limit per accident.

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

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

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

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

1 or as full performance with the indemnification provisions of this Permit.

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

5 5. PERMITTEE'S INDEMNIFICATION OF CITY.

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

16 B. In addition to Permittee's duty to indemnify, Permittee shall
17 have a separate and wholly independent duty to defend Indemnified Parties at
18 Permittee's expense by legal counsel approved by City, from and against all Claims,
19 and shall continue this defense until the Claims are resolved, whether by settlement,
20 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the
21 like on the part of Permittee shall be required for the duty to defend to arise. City
22 shall notify Permittee of any Claim, shall tender the defense of the Claim to
23 Permittee, and shall assist Permittee, as may be reasonably requested, in the
24 defense.

25 6. NON-RESPONSIBILITY OF CITY. City, its officers and employees
26 shall not be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism
27 or any other cause to the supplies, equipment or other personal property of Permittee
28 Parties in or on the City-owned Property, except to the extent caused by the gross

1 negligence of the City, its officers or employees. By executing this Permit and in
2 consideration for being allowed entry to the City-owned Property, Permittee waives all
3 claims against the City, its officers or employees for such loss or damage.

4 7. NO TITLE. Permittee and City acknowledge and agree that, by this
5 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
6 Property, including but not limited to any leasehold interest. Permittee shall not allow the
7 City-owned Property to be used by anyone other than a Permittee Party or for any other
8 purpose than stated in this Permit. Notwithstanding any language to the contrary in this
9 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then Permittee
10 waives any right of redemption under any existing or future law in the event that the City
11 removes it from the City-owned Property and agrees that, if the manner or method used
12 by the City in ending any right held by Permittee under this Permit gives to Permittee a
13 cause of action similar to or based on damages that would otherwise arise in connection
14 with unlawful detainer, then the total amount of damages to which Permittee would be
15 entitled in such action shall be One Dollar. Permittee agrees that this Section may be filed
16 in such action and that, when so filed, it shall be a stipulation by Permittee fixing the total
17 damages to which Permittee is entitled in such action.

18 8. NO ASSIGNMENT. Permittee shall not assign this Permit or the
19 permission granted by this Permit. Neither this Permit nor any interest in it shall be subject
20 to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
21 receivership. Any attempted assignment or other transfer that is not approved by the
22 Director shall be void and confer no right of entry on the purported assignee or transferee.

23 9. CONDITIONS OF PERMIT. Permittee shall obtain all necessary
24 certificates, permits and approvals as required by federal, state, and local authority and
25 must meet any and all Americans with Disabilities Act (ADA) requirements prior to entry to
26 City-owned Property.

27 10. NOTICE. Any notice or approval given under this Permit shall be in
28 writing and personally delivered or deposited in the U.S. Postal Service, registered or

1 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and
2 Marine at 2760 Studebaker Road, Long Beach, CA 90815, Attn: Contract Management
3 Division. Notice shall be deemed given on the date personal delivery is made or on the
4 date shown on the return receipt, whichever first occurs.

5 11. CONDITION AFTER ENTRY. After the entry of any Permittee Party
6 on the City-owned property, Permittee shall return the City-owned property in as good
7 condition or better condition as the City-owned property was in prior to such entry,
8 reasonable wear and tear excepted.

9 12. IMPROVEMENTS. Permittee shall not install, construct, erect or
10 maintain any structure or improvements on the City-owned property except as described
11 in this Permit and any attachments.

12 13. FUNDING. All demolition, site preparation, and improvements shall
13 be provided by the Permittee. Any additional funding needed to complete of the
14 improvements shall be secured by the Permittee. The Department shall not provide any
15 funding, supplies or staff support, other than review of the proposed site work, and a liaison
16 for communication purposes, unless approved in advance and in writing by the Department
17 Director.

18 14. NON-EXCLUSIVE USE: Any person or group proposing sport field or
19 sports court improvements does so for public benefit. Proposal of improvements does not
20 imply, nor does approval provide any exclusive use of the improved sports field or court.

21 15. NO LIMITATIONS ON CITY. The Permit shall not limit the City's right
22 or power to construct, erect, build, demolish, move or otherwise modify any structures,
23 buildings, landscaping or any other type of improvement on, over, in, or under the City-
24 owned Property.

25 16. NO RELEASE. The expiration or revocation of this Permit shall not
26 release either party from any liability or obligation, which accrued prior to such expiration
27 or revocation.

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1 17. OPERATIONS OF MAINTENANCE, SUPPLIES, AND SECURITY: All
2 improvements shall be kept in a neat, safe, and sanitary condition and maintained. If
3 improvements are damaged or vandalized, the Permittee will be responsible for the
4 maintenance and repair. Permittee will provide at its sole cost all necessary funding for
5 operations, ongoing maintenance, needed supplies, and scoreboard security. Permittee
6 shall be responsible for any and all repairs associated with the scoreboard. The
7 Department shall have no maintenance obligations with respect to the improvements on
8 the premises. Permittee shall keep the premises in a neat, safe and sanitary condition and
9 maintain the scoreboard to the Department's satisfaction.

10 18. NONDISCRIMINATION. In connection with performance of this
11 Permit and subject to applicable rules and regulations, Permittee shall not discriminate
12 against any employee or applicant for employment because of race, religion, national
13 origin, color, age, sex, sexual orientation, gender identify, AIDS, HIV status, handicap, or
14 disability. Permittee shall ensure that applicants are employed, and that employees are
15 treated fairly during their employment, without regard to these bases. These actions shall
16 include, but not be limited to, the following: employment, upgrading, demotion or transfer,
17 recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of
18 compensation, and selection for training, including apprenticeship.

19 It is the policy of City to encourage the participation of Disadvantaged,
20 Minority and Women-owned Business Enterprises in City's procurement process, and
21 Permittee agrees to use its best efforts to carry out this policy in the hiring of Contractors
22 to the fullest extent consistent with the efficient performance of this Permit. Permittee may
23 rely on written representations by consultants and subcontractors regarding their status.
24 Permittee shall report to City in May or in December or, in the case of short-term
25 agreements, prior to invoicing for final payment, the names of all sub consultants and
26 contractors hired by Permittee for this Project and information on whether or not they are
27 a Disadvantaged, Minority or Woman-owned Business Enterprise, as defined in Section 8
28 of the Small Business Act (15 U.S.C. Section 637)

1 19. ADA COMPLIANCE: Permittee may not discriminate against people
2 with disabilities and may not deny full and equal employment of good and services they
3 offer. The Permittee shall comply with all Americans with Disabilities Act requirements.

4 20. COMPLIANCE WITH LAWS. Permittee Parties shall be responsible
5 to acquire and pay for all necessary City permits and approvals, and pay any and all fees;
6 and shall comply with all applicable laws, rules, regulations and ordinances with respect to
7 their activities on the City-owned property.

8 21. INDEPENDENT CONTRACTOR. Permittee is an independent
9 contractor and not an employee, agent or other representative of the City. Permittee shall
10 have the right to select the means, manner and method of performing the services
11 described herein. Permittee understands and agrees that Permittee is not authorized to
12 incur any expenses or any liability whatsoever on behalf of the City and has no authority,
13 expressed or implied, to obligate or make representations on behalf of the City.

14 22. LIAISONS AND COMMUNICATION: Permittee will designate a
15 Department Liaison through which the Permittee will communicate.

16 23. MISCELLANEOUS.

17 A. This Permit shall be governed by and construed in accordance
18 with the laws of the State of California.

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

22 C. This Permit may only be amended by a written agreement,
23 signed by the City and Permittee.

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

27 E. On the expiration or revocation of this Permit, Permittee agrees
28 to and shall execute such documents, in recordable form if so requested, as the City

1 deems reasonably necessary to end the Permit and remove the Permit as an
2 encumbrance on the City-owned Property.

3 F. The failure or delay of the City to insist on strict compliance with
4 the provisions of this Permit shall not be deemed a waiver of any right or remedy
5 that City may have and shall not be deemed a waiver of any subsequent or other
6 failure to comply with any provision of this Permit.

7 G. This Permit is not intended or entered for the purpose of
8 creating any benefit or right for any person or entity that is not a signatory or a
9 Permittee Party.

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OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4604

IN WITNESS WHEREOF, the parties have executed this Permit on the
respective dates set forth opposite their signatures.

TD SPORTS, INC dba SPORT COURT OF
SOUTHERN CALIFORNIA, a Delaware
corporation

1/12/2023, 2022

By [Signature]
Name DALE M. HENDERICKSON
Title PRESIDENT

1/12/2023, 2022

By [Signature]
Name Sheryl S. Hendrickson
Title Vice President

"Permittee"

CITY OF LONG BEACH, DEPARTMENT
OF PARKS, RECREATION AND MARINE

January 26, 2023

By [Signature]
Director

"City"

This Right of Entry Permit is approved as to form on
January 16th, 2022 2023

DAWN MCINTOSH, City Attorney

By [Signature]
Deputy