

File No. 120141

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: February 29, 2012

Board of Supervisors Meeting

Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget & Legislative Analyst Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement - <i>Permit</i> |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |

OTHER

(Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Victor Young

Date: February 24, 2012

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Permit of Northeast-Facing Wall Sign - Total Outdoor Corporation - 1650 Mission Street]

2
3 **Resolution authorizing the execution of a Permit to Enter and Use Property (the**
4 **"Permit") for installation and maintenance of a Northeast-facing wall sign at 1650**
5 **Mission Street by and between the City and County of San Francisco and Total Outdoor**
6 **Corporation, a Delaware Corporation, Permittee.**

7
8 WHEREAS, The City acquired 1650 Mission Street (the "Property") in May, 2007 for
9 use as city offices including the Department of Planning and Human Services Agency; and,

10 WHEREAS, A lease of the northeast-facing wall sign 28 feet by 99 feet (the "Sign")
11 was assigned to the City as Landlord upon the acquisition of the Property; and,

12 WHEREAS, The lease of the Sign expired on March 31, 2011 without further renewal
13 options; and,

14 WHEREAS, The Real Estate Division of the City conducted a Request for Bid ("RFB")
15 to secure the most competitive Permit possible for the Sign, in conformance with all applicable
16 local regulations and restrictions relative to the Sign and the Sign's advertisements; and,

17 WHEREAS, A copy of the negotiated Permit for the Sign between the City and Total
18 Outdoor Corporation, as Permittee, is on file with the Clerk of the Board of Supervisors
19 under File No.120141; and,

20 WHEREAS, The Permit has an initial term expiring December 31, 2016; and

21 WHEREAS, The Permit requires an annual rent paid to the City in the amount of
22 \$63,000 if the Sign is not illuminated, or \$105,000 annually if illuminated; and

23 WHEREAS, The Permit provides the City with a bonus fee paid during the initial
24 term of \$30,000; and

25 WHEREAS, The Permit provides the City with a share of net revenues of 35%; and

1 WHEREAS, The Permit requires a Security Deposit in the amount of \$10,000; and
2 WHEREAS, The Permit affords Permittee with three 5-year extension options to
3 renew the Permit; and

4 WHEREAS, An analysis of the bids received pursuant to the RFB, with consideration of
5 the applicable regulatory and physical restrictions placed upon the Sign, confirms the
6 negotiated Permit to be the best economic terms possible for such Permit; now, therefore, be
7 it

8 RESOLVED, That in accordance with the recommendations of the Acting Director of
9 Property, the Board of Supervisors hereby approves the Permit in substantially the form of
10 such Permit as presented to this Board; and, be it

11 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
12 with respect to the Permit are hereby approved and ratified; and, be it

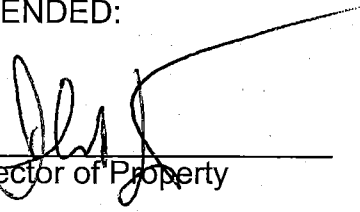
13 FURTHER RESOLVED, That the Board of Supervisors authorizes the Acting
14 Director of Property to execute the Permit, and to perform all acts required of the City
15 thereunder; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors authorizes the Acting
17 Director of Property to enter into any additions, amendments or other modifications to the
18 Permit (including, without limitation, the attached exhibits) that the Acting Director of
19 Property determines, in consultation with the City Attorney, are in the best interest of the
20 City, that do not materially increase the obligations or liabilities of the City, are necessary or
21 advisable to complete the Permit and effectuate the purpose and intent of this Resolution,
22 and are in compliance with all applicable laws, including the City's Charter; and, be it

23 FURTHER RESOLVED, That the Permit shall prohibit Tobacco Sales and Alcoholic
24 Beverage Advertising as stated in Sections 29 and 30 of the Permit; and, be it

1 FURTHER RESOLVED, That all actions authorized and directed by this Resolution
2 and heretofore taken are hereby ratified, approved and confirmed by this Board of
3 Supervisors.

4
5 RECOMMENDED:

6 
7 _____
8 Acting Director of Property

Item 1 File 12-0141	Department: Real Estate Division, Department of Administrative Services
--------------------------------------	---

EXECUTIVE SUMMARY**Legislative Objectives**

- The proposed resolution would authorize a permit between the City and Total Outdoor Corporation (Total Outdoor) for the purpose of authorizing Total Outdoor to enter City-owned property at 1650 Mission Street to install and maintain a billboard on the exterior wall of 1650 Mission Street.

Key Points

- When the City acquired the building at 1650 Mission Street in May 2007, the City assumed the existing agreement with CBS Outdoor, who was responsible for installing and maintaining a billboard on the exterior wall of 1650 Mission Street, facing Highway 101. That agreement expired on March 31, 2011. Under the agreement, CBS Outdoor was authorized to advertise on the billboard.
- The Real Estate Division (RED) issued a Request for Bids (RFB) to install, maintain and advertise on a new billboard at 1650 Mission Street on February 28, 2011, and a second RFB on March 11, 2011, clarifying that advertising for alcohol and tobacco products is prohibited. RED received five responsive bids.
- According to Mr. John Updike, Acting Director of Property, RED initially awarded the permit to Farias Outdoor, the highest bidder, but failed to reach agreement on a permit. RED then entered negotiations with West Coast Media, who was determined by RED to be the second highest bidder. West Coast Media was subsequently purchased by Total Outdoor Corporation (Total Outdoor) during the course of negotiations, which began on March 31, 2011 and completed in January 2012.
- The permit would be for an initial term from approximately May 1, 2012 through December 31, 2016, a period of four years and eight months. The permit contains three 5-year options to renew at the sole discretion of the City, for an additional 15 years, from January 1, 2017 through December 31, 2031. The proposed permit provides for payment by Total Outdoor to the City of the higher of either (a) the minimum annual guarantee (MAG) of \$63,000, or (b) percentage rent of 35 percent of net revenues that exceed \$180,000. Additionally, under the proposed permit, Total Outdoor would pay a one-time signing bonus of \$30,000.

Fiscal Impacts

- The proposed permit would generate \$93,000 in year one, payable by Total Outdoor to the City (\$63,000 in MAG plus \$30,000 one-time bonus). Over the four year and eight month term of the permit, the permit would generate at least \$324,000 in revenues to the City.
- The prior permit for the 1650 Mission Street billboard between the City and CBS Outdoor had a MAG of \$240,000. According to Mr. Updike, the MAG of \$63,000 under the proposed permit between the City and Total Outdoor is \$177,000, or 73.8 percent, less than the MAG of \$240,000 under the prior permit between the City and CBS Outdoor because the 1650 Mission Street billboard has not generated sufficient advertising revenues to justify the higher MAG. Total gross annual advertising revenues realized by CBS Outdoor for the 1650 Mission Street billboard in the twelve-month period from October 2009 through September 2010, which provides RED's most recent revenue data, were \$117,089, or \$122,911 less than the MAG of \$240,000.

Policy Issue

- The billboard on 1650 Mission Street is the only billboard advertising on a City-owned building. Proposition G, approved by the voters in March 2002, prohibits new general advertising signs, or billboards, within the City that were not in place as of March 5, 2002. RED was able to solicit a new advertising agreement, when the existing agreement between the City and CBS Outdoor terminated, because the 1650 Mission Street billboard was in place prior to March 5, 2002.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Under Charter Section 9.118(c), leases exceeding ten years and/or having anticipated revenue of \$1,000,000 or more are subject to Board of Supervisors approval.

Background

The City acquired a building at 1650 Mission Street in May 2007, which houses the Planning Department and the Department of Building Inspection. When the City acquired 1650 Mission Street, the City assumed an agreement with CBS Outdoor for billboard advertising on the exterior wall of the building, facing Highway 101. Under that agreement, CBS Outdoor paid the City the greater of the Minimum Annual Guarantee (MAG) of \$240,000 per year, or 50 percent of the gross advertising revenues received by CBS Outdoor. CBS Outdoor did not generate sufficient advertising revenues to pay percentage rent, and therefore paid the City the MAG of \$240,000 per year from May 2007 through termination of the agreement on March 31, 2011.

The City's Real Estate Division (RED) issued an initial Request for Bids (RFB) to 19 outdoor advertising firms to advertise on the 1650 Mission Street billboard on February 28, 2011, and a second RFB on March 11, 2011, clarifying that advertising for alcohol and tobacco products is prohibited. According to Mr. John Updike, Acting Director of Property, the alcohol and tobacco product advertising restrictions did not affect the original bids, and therefore, RED confirmed the original bid results on March 17, 2011. Table 1 shows the bid results.

Table 1
Results of the Request for Bids for 1650 Mission Street Billboard Advertising

Respondent	1 st Year MAG ¹	Annual Increases for the Initial Estimated 5 Year Term
Farias Outdoor	\$140,000	5%
West Coast Media/Total Outdoor ²	105,000	0%
Radiant	110,000	0%
CBS Outdoor (Previous Permit)	100,000	3%
Foster Interstate	60,000	0%

Source: Real Estate Division

¹ The MAG proposed by each bidder was based on the ability to advertise on illuminated billboards.

² West Coast Media/Total Outdoor proposed an additional one-time signing bonus of \$30,000.

RED calculated the bid results based on each bidder's proposed MAG for the first five years of the permit, including any annual percentage increases to the MAG or one-time signing bonuses.¹ According to Mr. Updike, RED initially awarded the permit to Farias Outdoor, but failed to

¹ RED's calculations of the bid results for the estimated five-year term of the permit are as follows: (a) Farias (\$773,588); (b) West Coast Media/Total Outdoor (\$555,000); (c) Radiant (\$550,000, with the condition that the City trim trees along Otis Street, Mission Street, and Van Ness Avenue); (d) CBS Outdoor (\$531,375); and (e) Foster Interstate (\$300,000).

reach agreement on a permit. RED terminated negotiations with Farias Outdoor on March 31, 2011.

RED then entered negotiations with West Coast Media, who was determined by RED to be the second highest bidder. West Coast Media was subsequently purchased by Total Outdoor Corporation (Total Outdoor) during the course of negotiations, which began on March 31, 2011, and were completed in January 2012.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the execution of a permit between the City and Total Outdoor, authorizing Total Outdoor's access to 1650 Mission Street in order to install and maintain the 28 foot by 99 foot exterior advertising billboard. Final negotiated terms of the permit include:

- All necessary regulatory approvals are secured by Total Outdoor by April 15, 2012;
- Initial term from approximately May 1, 2012, after all regulatory permits are secured, to December 31, 2016, a period of four years and eight months;
- Three 5-year options to renew at the sole discretion of the City, for an additional 15 years, from January 1, 2017 through December 31, 2031;
- 5 percent increase to the base MAG at the exercise of each of the three 5-year options to renew;
- One-time bonus fee of \$30,000 payable by Total Outdoor to the City at the commencement of the permit;
- Payment by Total Outdoor to the City of either the higher of the MAG of \$63,000 or percentage rent, as noted below;
- If the Planning Commission approves Total Outdoor's application to illuminate the billboard, as noted below, the MAG will be \$105,000, consistent with West Coast Media/Total Outdoor's bid as shown in Table 1 above;
- Percentage rent of 35 percent share of net revenues that exceed \$180,000 (if higher than the MAG)²; and
- Security Deposit of \$10,000.

According to Mr. Updike, although the five bidders, shown in Table 1 above, submitted bids based on the ability to illuminate the billboard, RED determined during negotiations with West Coast Media/Total Outdoor that the subject billboard did not have a Planning Department permit for illumination. Therefore, RED negotiated a two-tier MAG: (a) the lower MAG of \$63,000 if Total Outdoor does not obtain a Planning Department permit for illumination; and (b) the higher MAG of \$105,000 if Total Outdoor does obtain a Planning Department permit for illumination.

² Net revenues are calculated as the lesser of (a) gross revenues minus commissions by Total Outdoor to third party advertising agencies; or (b) 16.67 percent of gross revenues.

According to Mr. Updike, the installation of the billboard on the exterior wall of 1650 Mission Street requires California Department of Transportation approval (Caltrans) because the billboard faces Highway 101.

FISCAL IMPACTS

The proposed permit would generate \$93,000 in year one (MAG of \$63,000 plus a \$30,000 one-time bonus). Over the four-year, eight-month initial term, the permit would generate a MAG of \$324,000.³

The proposed permit provides for percentage rent if percentage rent exceeds the MAG. Percentage rent is calculated at 35 percent of net advertising revenues, which exceed \$180,000. For example, if net advertising revenues equal \$210,000, annual rent would be \$73,500 (35 percent of \$210,000), or \$10,500 more than the MAG of \$63,000.

As noted above, the prior permit for the 1650 Mission Street billboard advertising between the City and CBS Outdoor required a MAG of \$240,000. Although the permit provided for percentage rent of 50 percent of gross revenues, if such percentage rent were higher than the MAG, CBS Outdoor never paid more than the MAG of \$240,000.

According to Mr. Updike, the MAG of \$63,000 under the proposed permit between the City and Total Outdoor is \$177,000, or 73.8 percent less than the MAG of \$240,000 under the prior permit between the City and CBS Outdoor because the 1650 Mission Street billboard has not generated sufficient advertising revenues to justify the higher MAG. Total gross annual advertising revenues received by CBS Outdoor for the 1650 Mission Street billboard during the twelve-month period from October 2009 through September 2010, which provides RED's most recent revenue data, were \$117,089, or \$122,911 less than the MAG of \$240,000 which was payable by CBS Outdoor to the City. As noted in Table 1 above, CBS Outdoor proposed a MAG of \$100,000 in response to the RFB, as compared to the prior MAG of \$240,000 paid by CBS Outdoor.

POLICY ISSUE

The billboard on 1650 Mission Street is the only billboard advertising on a City-owned building. Proposition G, approved by the voters in March 2002, prohibits new general advertising signs, or billboards, within the City that were not in place as of March 5, 2002. The Real Estate Division was able to solicit a new advertising agreement, when the existing agreement between the City and CBS Outdoor terminated, because the 1650 Mission Street billboard was in place prior to March 5, 2002.

RECOMMENDATION

Approve the proposed resolution.

³ \$93,000 in year one, plus \$63,000 in years two through four (for a total of \$189,000), plus \$42,000 for eight months in year five, equal \$324,000.



John Updike
Acting Director of Real Estate

February 13, 2012

Through Naomi Kelly, City Administrator

Honorable Board of Supervisors
 City and County of San Francisco
 City Hall, Room 244
 1 Dr. Carlton B. Goodlett Place
 San Francisco, California 94102

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2012 FEB 13 PM 2:02
 BY *RPD*

Re: Temporary Permit for Wall Sign at 1650 Mission Street

Dear Board Members:

Attached for your consideration is a proposed Resolution authorizing the acceptance of a Temporary Permit to Enter and Use Property (Permit) for a wall sign at 1650 Mission Street. This Permit would allow the installation and maintenance of a 28' x 99' northeast-facing wall sign by Total Outdoor Corporation.

Previously, the NE face of the building at 1650 Mission was occupied by a wall sign managed by CBS Outdoor, as a successor in interest to a prior tenant. The CBS tenancy was accepted by the City upon the acquisition of the building in May of 2007. The CBS tenancy did not have a renewal option, and expired March 31, 2011. Real Estate staff consulted with Planning Department and Caltrans staff (the visual impact of the wall sign includes the Van Ness/101 corridor, thus Caltrans has a regulatory role) on a variety of regulatory matters regarding this wall sign to confirm the terms and conditions of an acceptable Permit.

On February 28, 2011, a Request for Bids (RFB) was issued to all known active outdoor advertising agencies in the west (19 firms). As participating firms suggested that the original RFB did not clearly state the tobacco and alcohol advertising restrictions pursuant to Board-approved legislation, a second round RFB was completed in March, 2011, confirming with the five respondents their bid intentions given those restrictions. The restrictions did not affect the original bids and original RFB results were confirmed at that time. Negotiations during the summer of 2011 with the apparent highest bidder failed to produce an acceptable permit. Negotiations then commenced throughout the remainder of 2011 with the second best bidder, producing the Permit now before the Board for consideration. Negotiations were protracted due a number of uncertainties, such as illumination rights of the sign (it was determined this sign does NOT have illumination rights), Caltrans permitting likelihood, access rights to the roof of 1650 Mission, and a variety of other matters. The negotiated Permit represents the best economic return to the City for this wall sign while addressing the above uncertainties, and provides a potential long-term revenue stream for Real Estate with profit participation potential.

The results of the RFB were as follows:

<u>Respondent</u>	<u>1st Year Min. Rent</u>	<u>Annual Increases</u>	<u>Share of Net Revenues</u>
Farias Outdoor	\$140,000*	5%	To be negotiated
West Coast/Total	\$105,000**	0%	40%
Radiant	\$110,000	0%	50%
CBS	\$100,000	3%	50%
Foster Interstate	\$ 60,000	0%	50%

*- Was not a minimum guarantee, was contingent upon unlikely gross revenue achievement

** - Additional Bonus Payment of \$25,000 over minimum in first year

After negotiations with Farias failed to produce an acceptable permit, negotiations commenced with the next best bidder, as determined by calculating the net present value of return over the initial five year term and without consideration of the gross revenue share potential. During negotiations, West Coast Media's interest was assumed by Total Outdoor Corporation, the prospective Permittee.

Terms were negotiated once access challenges to the roof and wall of 1650 Mission were addressed, along with reaching an understanding that illumination of the wall sign was not previously permitted by the Planning Department (documents on file initially suggested otherwise), thus base rent has been set assuming no illumination with an increase in rent should illumination be approved. Final negotiated terms of the Permit, pursuant to those negotiations, are outlined below:

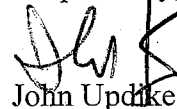
- Secure all necessary regulatory approvals by April 15, 2012;
- Initial term of approx May 1, 2012 to December 31, 2016 with three 5-year renewal options;
- Provide a bonus fee of \$30,000;
- Initial annual rent of \$63,000 (\$105,000 if illumination is approved, consistent with the RFB);
- Net revenue share of 35%
- Increases of 5% to base rent upon each 5-year renewal;
- Security Deposit of \$10,000.

To illustrate the financial terms, should expenses reach the maximum of 16.67% allowed against gross revenues, and should Total Outdoor secure gross monthly revenues of \$21,000 similar to that achieved by the prior tenant (without any vacancy), City would enjoy an additional \$10,497/year in revenue share above the base rent (without illumination).

It should be noted that the prior lease of the wall sign had a fixed annual rent in the final year of the lease of \$240,000 until the March, 2011 expiration. The bids received clearly reflect the significant changes in the advertising industry and reduction of gross revenues currently experienced.

The Real Estate Division recommends approval of the Resolution. If you have any questions in this regard, please contact me at 554-9860.

Respectfully,



John Updike
Acting Director of Property

Attachments

TEMPORARY PERMIT TO ENTER AND USE PROPERTY

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

Total Outdoor Corp., a Delaware corporation,
Permittee

to enter and use
East Facing Wall of the Building at 1650 Mission Street,
San Francisco, California

January 10, 2012

TABLE OF CONTENTS

	<u>Page</u>
1. LICENSE.....	3
2. USE OF PERMIT AREA.....	3
3. INSTALLATION OF FACILITIES.....	3
3.1 Approval of Plans and Specifications.....	3
3.2 Permits and Approvals.....	3
3.3 Wages and Working Conditions.....	4
3.4 Pre-Construction Baseline.....	4
3.5 Exercise of Due Care.....	4
3.6 Cooperation with City Personnel.....	4
3.7 [Intentionally deleted].....	4
3.8 Restoration of Permit Area.....	4
3.9 Diminished Value.....	4
3.10 As-Built Drawings.....	5
3.11 Responsibility for Maintenance of Facilities.....	5
3.12 Revocability.....	5
4. RESTRICTIONS ON USE.....	5
4.1 Improvements.....	5
4.2 Dumping.....	6
4.3 Hazardous Material.....	6
4.4 Nuisances.....	6
4.5 Damage.....	6
5. PERMIT FEE.....	6
5.1 Bonus Fee.....	6
5.2 Monthly Fee.....	7
5.3 Revenue Share.....	7
5.4 Payments.....	7
6. TERM OF PERMIT; REVOCABILITY.....	8
6.1 Initial Permit Term.....	7
6.2 Extension Options.....	8
7. INSURANCE.....	9
8. SECURITY FOR PERFORMANCE.....	10
9. COMPLIANCE WITH LAWS.....	11
10. COVENANT TO MAINTAIN PERMIT AREA.....	11
11. REMOVAL OR ALTERATION OF IMPROVEMENTS.....	11
12. SURRENDER.....	12
13. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES.....	12
14. REPAIR OF DAMAGE.....	13

15.	UTILITIES	13
16.	CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE.....	14
17.	NO COSTS TO CITY	14
18.	INDEMNITY.....	14
19.	"AS IS" CONDITION OF PERMIT AREA; DISCLAIMER OF REPRESENTATIONS	15
20.	NO ASSIGNMENT	15
21.	CESSATION OF USE.....	15
22.	NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION	15
23.	MACBRIDE PRINCIPLES - NORTHERN IRELAND	15
24.	NON-DISCRIMINATION	16
24.1	Covenant Not to Discriminate	16
24.2	Subcontracts.....	16
24.3	Non-Discrimination in Benefits.....	16
24.4	Condition to Permit.....	16
24.5	Incorporation of Administrative Code Provisions by Reference.....	16
25.	TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN	17
26.	NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS	17
27.	POSSESSORY INTEREST TAXES.....	17
28.	PESTICIDE PROHIBITION.....	17
29.	PROHIBITION OF TOBACCO SALES AND ADVERTISING.....	18
30.	PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING	18
31.	CONFLICTS OF INTEREST.....	18
32.	FOOD SERVICE WASTE REDUCTION	18
33.	NOTICES	19
34.	COUNTERPARTS	19
35.	COOPERATIVE DRAFTING	19
36.	GENERAL PROVISIONS	19

**CITY AND COUNTY OF SAN FRANCISCO
TEMPORARY PERMIT
TO ENTER AND USE PROPERTY
(1650 Mission Street, East Facing Wall, San Francisco)**

THIS TEMPORARY PERMIT TO ENTER AND USE PROPERTY (this "**Permit**"), dated for reference purposes only as of January 10, 2012, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and TOTAL OUTDOOR CORP., a Delaware corporation ("**Permittee**").

City and Permittee agree as follows:

1. LICENSE

City confers to Permittee a temporary, personal, assignable, exclusive and non-possessory privilege to use the portion of certain East Facing wall of the building ("**Building**") located upon the real property owned by City located at 1650 Mission Street in the City and County of San Francisco, as more particularly depicted in Exhibit A attached hereto (the "**Permit Area**"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only, and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. The privilege given to Permittee under this Permit is effective only insofar as the rights of City in the Permit Area are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Area.

2. USE OF PERMIT AREA

Permittee may use the Permit Area for the sole purpose of installing and maintaining a wall sign ("**Wall Sign**") in the Permit Area for commercial or non-commercial advertising purposes (but not for alcohol-related or tobacco-related products) and for no other purpose whatsoever.

3. INSTALLATION OF FACILITIES

The Wall Sign may be comprised of pressure-sensitive vinyl or other such imaging system or method (which may include installation of I-Bolts into the Building at a location within the Permit Area and through a process to be approved by City at City's sole and absolute discretion) only upon satisfaction of the following conditions, which are for the sole benefit of City:

3.1 Approval of Plans and Specifications

Any Wall Sign that is not comprised of pressure-sensitive vinyl and any other improvements installed at the Premises by Permittee pursuant to this Permit ("**Future Improvements**") shall be installed by Permittee in accordance with plans and specifications approved in advance and in writing by City.

3.2 Permits and Approvals

Before beginning any work (the "**Work**") to install the Wall Sign, or any Future Improvements, Permittee shall obtain all permits, licenses and approvals (collectively, "**Regulatory Approvals**") of any regulatory agencies required to commence and complete such Work and operate the Wall Sign and the Future Improvements. Promptly upon receipt of such Regulatory Approvals, Permittee shall deliver copies of them to City. Permittee recognizes and agrees that no approval by City with respect to the Work pursuant to this Permit shall be deemed

to constitute the Approval of any federal, state or local regulatory authority with jurisdiction (including City acting in its regulatory capacity), and nothing herein shall limit Permittee's obligation to obtain all such Regulatory Approvals, at Permittee's sole cost. If, despite Permittee's commercially reasonable efforts, Permittee is not able to obtain all necessary Regulatory Approvals to install and operate the Wall Sign by April 15, 2012, Permittee shall have the right to terminate this Permit by delivering written notice of such termination to City on or before May 1, 2012.

3.3 Wages and Working Conditions

With respect to the performance of the Work, any employee performing services for Permittee shall be paid not less than the highest prevailing rate of wages and that Permittee shall include, in any contract for construction of such Work or any alterations by or for Permittee on the Permit Area, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Permittee further agrees that, as to the construction of the Work or any other alterations on the Permit Area under this Permit, Permittee shall comply with all the applicable provisions of Section 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Permittee shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in performing the Work or any other alterations on the Permit Area.

3.4 Pre-Construction Baseline

Permittee shall document the condition of the Permit Area prior to the commencement of the Work through the use of photographs, maps and any other appropriate documentation to provide a pre-construction baseline to monitor impacts. Appropriate documentation shall be determined in consultation with City. Permittee shall provide City with a copy of such documentation prior to the commencement of construction.

3.5 Exercise of Due Care

Permittee shall use, and shall cause its Agents (as defined in Section 19 below) to use, due care at all times to avoid any damage or harm to the Building and any of City's property. Permittee shall take such resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation work. Permittee shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to Permittee's use hereunder.

3.6 Cooperation with City Personnel

Permittee and its Agents shall work closely with City personnel to secure access to the Permit Area and shall not leave unattended construction materials or other items on or near the Permit Area.

3.7 [Intentionally Deleted]

3.8 Restoration of Permit Area

Immediately following completion of the Work and any work or any other alterations permitted under this Permit, Permittee shall remove all debris and restore the Permit Area to its condition immediately prior to Permittee's use hereunder, to the satisfaction of City.

3.9 Diminished Value

If the view of the Permit Area from the portion of Mission Street abutting the Building and extending to Van Ness Avenue is obstructed or impaired by any physical obstruction, including but not limited to any new construction or any deterioration or defective conditions that affect the exterior of the Building or a change in the use and configuration of the portion of Mission Street immediately abutting the Permit Area from a 2-lane street with vehicular traffic flowing in a north-south direction, or if any laws or regulations prohibit the installation, operation or maintenance of the Wall Sign, Permittee shall have the right to notify City of such matter in writing (an "**Impairment Notice**"). Permittee acknowledges and agrees that City shall not be obligated to cure any matter described in an Impairment Notice.

If a matter described in an Impairment Notice is not cured by City or any other party within sixty (60) days immediately following City's receipt of such Impairment Notice (the "**Cure Period**"), Permittee shall have the right to terminate this Permit by delivering written notice of such termination on or before the tenth (10th) day immediately following the expiration of such Cure Period. If Permittee timely terminates this Permit pursuant to this Section, City shall return any unamortized portion of the Bonus Fee (as defined in Section 5.1) to Permittee. If Permittee does not timely terminate this Permit following the expiration of a Cure Period without a cure of the matter described in the applicable Impairment Notice, Permittee shall be deemed to have accepted such matter.

3.10 As-Built Drawings

Promptly upon completion of the installation of the Wall Sign and any Future Improvements, Permittee shall furnish City with a complete copy of final as-built drawings therefor, as and if applicable.

3.11 Responsibility for Maintenance of Facilities

Permittee shall be solely responsible for maintaining the Wall Sign and any Future Improvements in good and safe condition, and City shall have no duty whatsoever for any maintenance of the Wall Sign, the Permit Area or any Future Improvements.

3.12 Revocability

Permittee acknowledges and agrees that the installation of the Wall Sign or any Future Improvements shall not in any way whatsoever limit City's right to revoke this Permit pursuant to Section 6.1 or Section 20 or any of City's other rights hereunder.

4. RESTRICTIONS ON USE

Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

4.1 Improvements

Except as otherwise expressly provided in this Permit, Permittee shall not construct or place any temporary or permanent Future Improvements on the Permit Area, nor shall Permittee alter any existing structures or improvements on the Permit Area, without obtaining City's prior written consent, which may be granted or withheld at City's sole and absolute discretion. Notwithstanding anything to the contrary in the foregoing sentence, City shall not unreasonably withhold its consent to Permittee's request to install and use lighting in the Permit Area to the extent necessary, in Permittee's commercially reasonable judgment, to adequately illuminate the Wall Sign (the "**Permittee Lights**") or to install ballasts and other supporting structures, connections and service panels to the extent necessary to adequately support the Wall Sign or

any Permittee Lights, provided that Permittee shall install such items in compliance with the requirements set forth in Article 3.

4.2 Dumping

Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.

4.3 Hazardous Material

Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as defined in Section 19 below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.

4.4 Nuisances

Permittee shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

4.5 Damage

Permittee shall not do anything about the Permit Area that will cause damage to the Building or any of City's property.

5. PERMIT FEE

5.1 Bonus Fee

On or before the Commencement Date (as defined in Section 6.1), Permittee shall pay City a one-time initial bonus fee of \$30,000.00 (Thirty Thousand and no/100 Dollars (the

"**Bonus Fee**") as partial consideration for Permittee's use of the Permit Area pursuant to this Permit. The Bonus Fee shall be evenly amortized at a daily rate over the period commencing on the Commencement Date and terminating on the Expiration Date (as defined in Section 6.1).

5.2 Monthly Fee

Throughout the term of this Permit beginning on the Commencement Date, Permittee shall pay to City a monthly permit fee (the "**Monthly Fee**") in the amount of \$5,250.00 (Five Thousand Two Hundred Fifty and no/100 Dollars) as partial consideration of Permittee's use of the Permit Area pursuant to this Permit, subject to any adjustment pursuant to Section 6.2. Each payment of the Monthly Fee shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, on or before the Commencement Date and on or before the first day of each month thereafter.

The Monthly Fee shall be increased to \$8,750.00 (Eight Thousand Seven Hundred Fifty and no/100 Dollars) (the "**Increased Monthly Fee**") if and only if Permittee is able to obtain a permit to install the Permittee Lights (a "**Lighting Permit**") from the San Francisco Planning Department ("**Planning Department**") or any other City department with regulatory authority to issue a Lighting Permit. For the avoidance of doubt, the Increased Monthly Fee shall only apply in this Permit (including, but not limited to, the references to the Increased Monthly Fee in Sections 5.2, 5.3(b) and 6.2) while a Lighting Permit is in effect and shall not apply if such Lighting Permit subsequently expires or is rescinded.

5.3 Revenue Share

(a) "**Agency Commissions**" shall mean amounts paid or payable by Permittee to third-party advertising agencies that buy advertising on the Wall Sign on behalf of advertisers, "**Gross Revenues**" shall mean the gross revenues received or payable to Permittee for the Wall Sign, including cash, the value of any non-cash consideration, and revenues received for installing advertising or promotional items for any other party, less Permittee's installation costs for installing such items, and "**Revenue Share Threshold**" shall mean \$180,000.00 (One Hundred Eighty Thousand and no/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Revenue Share Threshold shall be increased to \$300,000.00 (Three Hundred Thousand and no/100 Dollars).

(b) Permittee intends to place advertisements and other promotional items on the Wall Sign on behalf of third parties. Within thirty (30) days of each anniversary of the Commencement Date, Permittee shall provide to City a full accounting of the Gross Revenues and Agency Commissions for the twelve (12) month period immediately preceding such anniversary (each, an "**Accounting Period**"). "**Net Revenue**" shall mean the Gross Revenues for an Accounting Period, less an amount equal to the lesser of (i) the Agency Commissions for such Accounting Period and (ii) 16.67% of the Gross Revenues for such Accounting Period. If the Net Revenue for an Accounting Period exceeds the Revenue Share Threshold, Permittee shall pay to City an amount equal to thirty-five percent (35%) of such Net Revenue, less the Monthly Fee payments paid by Permittee to City for such Accounting Period within ten (10) business days of submitting such accounting to City.

5.4 Payments

All sums payable by Permittee to City hereunder shall be paid in cash or by good check to the City and County of San Francisco and delivered to City's Director of Property at the primary address for notices to City specified below, or such other place as City may designate in writing. The Monthly Fee payable for any fractional month during the term of this Permit shall be prorated for any fractional month.

Permittee hereby acknowledges that late payment by Permittee to City of any of the fees or other sums due hereunder will cause City to incur costs not contemplated by this Permit, the

exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any such fees or any other sum due from Permittee is not delivered to City within fifteen (15) days after such amount is due, Permittee shall pay to City a late charge of One Hundred Fifty Dollars (\$150) for such late payment. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Permittee. Acceptance of such late charge by City neither constitutes a waiver of Permittee's default with respect to such overdue amount, nor prevents City from exercising any of the other rights and remedies available to City.

6. TERM OF PERMIT; REVOCABILITY

6.1 Initial Permit Term

The privilege given to Permittee pursuant to this Permit is temporary only and shall commence on the later date (the "**Commencement Date**") to occur of (a) final approval of this Permit by the City's Board of Supervisors and Mayor, and (b) the earlier date to occur of (i) the first day of the month immediately following the date that Permittee receives all Regulatory Approvals required to install the Wall Sign and (ii) May 1, 2012, and shall expire no later than 5:00 p.m. on December 31, 2016 (the "**Expiration Date**"), subject to any extensions pursuant to Section 6.2; provided, however, in the event Permittee fails to comply with any of the terms or conditions of this Permit and cure such non-compliance within ten (10) days after receiving notice thereof by City (or in the case of Permittee's failure to comply with any non-monetary obligation that cannot be cured within such period, in the event Permittee does not commence cure within such period and diligently pursue such cure to completion), City may, without limiting any of its other rights and remedies, revoke this Permit, whereupon Permittee shall immediately surrender the Permit Area in the condition required hereunder.

Further, notwithstanding anything to the contrary herein, City may revoke this Permit, with or without notice to Permittee, in the event of an Emergency (defined as follows), whereupon Permittee shall immediately surrender the Permit Area in the condition required hereunder. An "**Emergency**" shall mean a fire, natural disaster, act of God, civil insurrection, or any cause outside City's reasonable control that renders the Building unfit for any use or requires City to use the Building for any purpose that would be materially hampered by Permittee's maintenance or use of the Wall Sign pursuant to this Permit. If City revokes this Permit due to an Emergency, City shall reimburse Permittee any unamortized portion of the Bonus Fee remaining as of such revocation date and for any costs incurred by Permittee as of such revocation date related to sales, marketing and production for any future advertising sales of the Permit Area for the one (1) year period immediately following such revocation date. The period commencing on the Commencement Date and terminating on December 31, 2016 shall be the "**Initial Permit Term**".

6.2 Extension Options

(a) City grants to Permittee three (3) options to extend the term of this Permit as to the entire Permit Area only (each, an "**Extension Option**"), each for an additional five (5) years (each, an "**Extension Term**"), on the following terms and conditions. Permittee shall have the right to exercise the first Extension Option by delivering written notice to City of such exercise not less than one hundred eighty (180) days prior to the expiration of the Initial Permit Term. If Permittee timely exercises the first Extension Option and City does not reject such exercise pursuant to this Section, the "**First Extension Term**" shall commence on January 1, 2017, and shall terminate on December 31, 2021. If the term of this Permit is extended by the First Extension Term, Permittee shall have the right to exercise the second Extension Option by delivering written notice to City of such exercise not less than one hundred eighty (180) days prior to the expiration of the First Extension Term. If Permittee timely exercises the second Extension Option, and City does not reject such exercise pursuant to this Section, the "**Second Extension Term**" shall commence on January 1, 2022, and shall terminate on December 31, 2026. If the term of this Permit is extended by the Second Extension Term, Permittee shall have

the right to exercise the third Extension Option by delivering written notice to City of such exercise not less than one hundred eighty (180) days prior to the expiration of the Second Extension Term. If Permittee timely exercises the third Extension Option, and City does not reject either such exercise pursuant to this Section, the "**Third Extension Term**" shall commence on January 1, 2027 and shall terminate on December 31, 2031.

Any extension notices delivered by Permittee pursuant to this Section shall be irrevocable by Permittee. If Permittee is in default of any of its obligations under this Permit at the time of Permittee's exercise of an Extension Option or at any time prior to the first day of the applicable Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Permittee to reject Permittee's exercise of such applicable Extension Option, whereupon the Extension Options shall be null and void. City shall also have the right to void any or all of the Extension Options if Permittee assigns its interest hereunder without City's prior written consent (except in the event of an Affiliate Assignment, as defined in Section 20), which consent shall not be unreasonably withheld.

(b) If Permittee timely exercises the first Extension Option, all the terms, covenants and conditions of this Permit shall apply to the First Extension Term, except that (i) the Monthly Fee shall be adjusted to \$5,512.50 (Five Thousand Five Hundred Twelve and 50/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Monthly Fee shall be increased to \$9,187.50 (Nine Thousand One Hundred Eighty-Seven and 50/100 Dollars), and (ii) the Revenue Share Threshold shall be adjusted to \$189,000.00 (One Hundred Eighty-Nine Thousand and no/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Revenue Share Threshold shall be increased to \$315,000.00 (Three Hundred Fifteen Thousand and no/100 Dollars).

(c) If Permittee timely exercises the second Extension Option, all the terms, covenants and conditions of this Permit shall apply to the Second Extension Term, except that (i) the Monthly Fee shall be adjusted to \$5,788.13 (Five Thousand Seven Hundred Eighty-Eight and 13/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Monthly Fee shall be increased to \$9,646.88 (Nine Thousand Six Hundred Forty-Six and 88/100 Dollars), and (ii) the Revenue Share Threshold shall be adjusted to \$198,450.00 (One Hundred Ninety-Eight Thousand Four Hundred Fifty and no/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Revenue Share Threshold shall be increased to \$330,750.00 (Three Hundred Thirty Thousand Seven Hundred Fifty and no/100 Dollars).

(d) If Permittee timely exercises the third Extension Option, all of the terms, covenants and conditions of this Permit shall apply to the Third Extension Term, except that (i) the Monthly Fee shall be adjusted to \$6,077.53 (Six Thousand Seventy-Seven and 53/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Monthly Fee shall be increased to \$10,129.22 (Ten Thousand One Hundred Twenty-Nine and 22/100 Dollars), and (ii) the Revenue Share Threshold shall be adjusted to \$208,372.50 (Two Hundred Eight Thousand Three Hundred Seventy-Two and 50/100 Dollars); provided, however, that if the Increased Monthly Fee shall apply than the Revenue Share Threshold shall be increased to \$347,287.50 (Three Hundred Forty-Seven Thousand Two Hundred Eighty-Seven and 50/100 Dollars).

7. INSURANCE

(a) Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Permit Area insurance as follows:

(i) General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees,

Explosion, Collapse and Underground (XCU), Broadform Property Damage, Products Liability and Completed Operations;

(ii) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and sudden and accidental pollution; and

(iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

(d) Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(f) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

(g) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

(h) Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance

coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

8. SECURITY FOR PERFORMANCE

At or before the date for commencement of this Permit, Permittee shall deposit with City the sum of \$10,000.00 (Ten Thousand and no/100 Dollars) (the "**Security Deposit**") to secure Permittee's faithful performance of all terms and conditions of this Permit, including, without limitation, its obligation to surrender the Permit Area in the condition required by this Permit. Such Security Deposit shall be in the form of cash. The amount of the security deposit shall not limit Permittee's obligations under this Permit. Permittee agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Permit Area caused by Permittee, its Agents or Invitees, or any failure of Permittee to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of permit fees or other sum due hereunder either before or after a default), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Permittee waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that City may retain any portion of Security Deposit reasonably necessary to compensate City for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Permittee, its Agents or Invitees. Without limiting the foregoing, Permittee understands and agrees that City may apply some or all of the Security Deposit to the payment of future permits fees following a Permittee default.

Should City use any portion of the Security Deposit to cure any default by Permittee hereunder, Permittee shall immediately replenish the Security Deposit to the original amount. If the permit fee Rent is increased pursuant to any of the provisions of this Permit, Permittee shall increase the amount of the Security Deposit accordingly. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Permittee shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Permittee under any provision of this Permit.

9. COMPLIANCE WITH LAWS

Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or Regulatory Approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee's obligation to obtain any required Regulatory Approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

10. COVENANT TO MAINTAIN PERMIT AREA

In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Area may be affected by Permittee's activities hereunder.

11. REMOVAL OR ALTERATION OF IMPROVEMENTS

Without limiting any of City's other rights hereunder, Permittee shall promptly, at City's request, alter or remove at its sole expense any and all improvements or other property installed or placed in, on, under or about the Permit Area by Permittee, as may be necessary to avoid any actual or potential interference with any public utilities installed in, on, under or about the Permit Area prior to the Commencement Date, with the maintenance or repair thereof, or otherwise with any public trust uses or any other municipal operations or uses by City. In the event of an Emergency, City may, at its sole option and without notice, alter, remove or protect at Permittee's sole expense, the Wall Sign, any Future Improvements, and any other facilities, improvements, plantings or other property installed or placed on the Permit Area by Permittee.

12. SURRENDER

Upon the expiration of this Permit or within ten (10) days after any revocation of this Permit pursuant to Section 6.1 or Section 20 or any other termination of this Permit, Permittee shall surrender the Permit Area in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, Permittee shall remove the Wall Sign and all of its property and any other improvements installed by or for Permittee from the Permit Area, and shall repair, at its cost, any damage to the Permit Area caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

13. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES

(a) Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by Permittee.

(b) Permittee acknowledges that this Permit is revocable by City pursuant to Section 3.2, Section 7, Section 6.1 and Section 20, and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that City exercises its right to revoke or terminate this Permit pursuant to Section 3.2, Section 7, Section 6.1 or Section 20.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the facilities or Permittee's uses hereunder. City would not be willing to give this Permit in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES

AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence or willful misconduct of City or its Agents.

(e) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

14. REPAIR OF DAMAGE

If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by Permittee hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition.

15. UTILITIES

15.1 Location of Utilities

City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and protect them from damage. Permittee shall arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City and any such utility companies of any such relocation.

15.2 Provision and Use of Utilities

Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder, provided, however, that City shall reasonably cooperate with Permittee's efforts to access existing Building utilities to power any Permittee Lights at Permittee's sole cost and expense. Notwithstanding anything to the contrary in the foregoing sentence, City shall have no obligation to take any actions that would cause City to incur any costs, exceed the Building's current utility capacity or damage the Building or the Building's current utility service. Permittee shall not: (a) connect or use any electrical equipment if such connection or use, combined with the connections and uses of the remainder of the Building, would exceed the capacity of the Building electrical system; or (b) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed, except for such modifications as may be shown on plans approved in writing in advance by City.

Permittee, at its sole cost, shall cause the installation of a temporary submeter to the Building's electrical power facilities to measure the electricity used by Permittee (the "**Electricity Submeter**"). When permitted by serving utilities, Permittee shall be responsible directly to the serving utilities for any Electricity Submeter and utilities used by Permittee at the Building and shall pay such utility providers directly therefor. Permittee shall provide evidence of such payments to City promptly following City's request therefor.

If the electricity utility serving the Building does not allow for all Permittee's direct payment for the Electrical Submeter or the utilities used by Permittee at the Building, Permittee shall fully reimburse City for any amounts charged to City for such items within fifteen (15) business days following City's demand therefor. During any period that a serving electricity utility does not allow for Permittee's direct payment for utility services provided to Permittee at the Permit Area, Permittee shall pay for its use of utilities for such period to City within fifteen (15) business days of City's demand therefor.

16. CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE

If Permittee fails to perform any of its obligations under this Permit, to restore the Permit Area or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency that harms or threatens to harm public health or safety, as reasonably determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

17. NO COSTS TO CITY

Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

18. INDEMNITY

Permittee shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "**Losses**"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of Permittee, its officers, agents, employees, contractors or subcontractors (collectively, "**Agents**"), its invitees, guests or business visitors (collectively, "**Invitees**"), or third persons, relating in any manner to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment; except solely to the extent of Losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee specifically

acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

19. "AS IS" CONDITION OF PERMIT AREA; DISCLAIMER OF REPRESENTATIONS

Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Area or any facilities on the Permit Area for Permittee's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the Permit Area in the manner contemplated hereby.

20. NO ASSIGNMENT

This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances without the prior written consent of City, which shall not be unreasonably withheld; provided, however, that any assignment of this Permit by Permittee to an Affiliate (defined as follows) shall not require City's prior written consent if Permittee notifies City in writing prior to such assignment to an Affiliate. An "Affiliate" shall mean, any of the following: (1) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Permittee (an "Owning Person"), (2) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Permittee, (3) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Permittee. Any attempt to assign, convey or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

21. CESSATION OF USE

Permittee will not terminate its activities on the Permit Area pursuant hereto without prior written notice to City.

22. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION

This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Area. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in or relating to the Permit Area.

23. MACBRIDE PRINCIPLES - NORTHERN IRELAND

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with

corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24. NON-DISCRIMINATION

24.1 Covenant Not to Discriminate

In the performance of this Permit, Permittee agrees not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

24.2 Subcontracts

Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection 24.1 above. In addition, Permittee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit. Permittee shall provide City with copies of all subcontracts within ninety (90) days of execution.

24.3 Non-Discrimination in Benefits

Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

24.4 Condition to Permit

As a condition to this Permit, Permittee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Permittee hereby represents that prior to execution of this Permit, (i) Permittee executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

24.5 Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies

provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

25. TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

26. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Permittee's board of directors; chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

27. POSSESSORY INTEREST TAXES

Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Permit or use of the Permit Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

28. PESTICIDE PROHIBITION

Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to the Real

Estate Division an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the term of this Permit, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

29. PROHIBITION OF TOBACCO SALES AND ADVERTISING

Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Permit Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

30. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Area. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

31. CONFLICTS OF INTEREST

Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

32. FOOD SERVICE WASTE REDUCTION

Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Permit as though fully set forth herein. This provision is a material term of this Permit. By entering into this Permit, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Permit was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Permittee's failure to comply with this provision.

33. NOTICES

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City: Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **1650 Mission Wall Sign**

Permittee: Total Outdoor Corp.
414 Stewart Street, Suite 204
Seattle, WA 98101
Attn: Frank Podany
fpodany@totaloutdoor.com

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

34. COUNTERPARTS

This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

35. COOPERATIVE DRAFTING

This Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Permit reviewed and revised by legal counsel. No party shall be considered the drafter of this Permit, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Permit.

36. GENERAL PROVISIONS

(a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or permitted hereunder may be made by the Director of Property or other authorized City official. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be

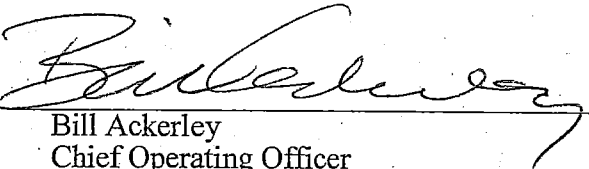
binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS PERMIT, PERMITTEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS PERMIT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS PERMIT SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS PERMIT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS PERMIT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

Permittee represents and warrants to City that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

TOTAL OUTDOOR CORP., a Delaware corporation

By: 
Bill Ackerley
Chief Operating Officer

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike
Acting Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

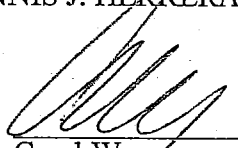
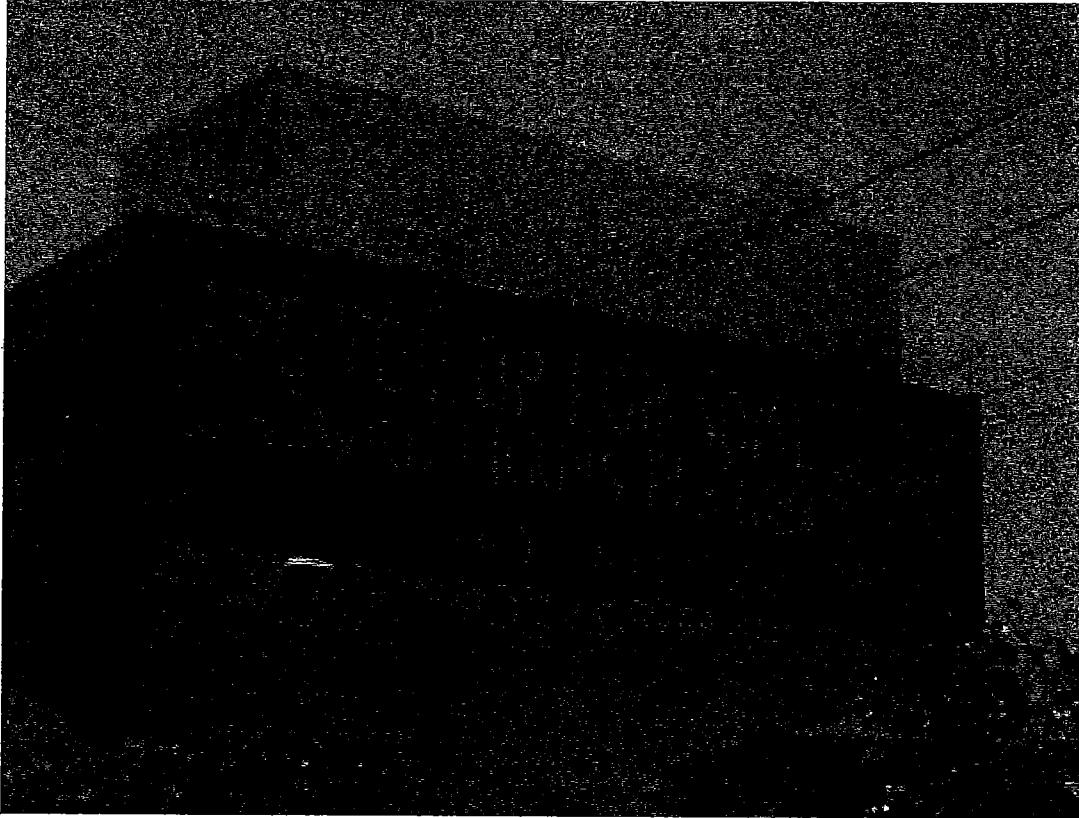
By: 
Carol Wong
Deputy City Attorney

EXHIBIT A

Depiction of Permit Area



FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information (Please print clearly.)	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information (Please print clearly.)	
Name of contractor: Total Outdoor Corporation, a Delaware Corporation	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. Board Members: Louis Friedman, Chairman Jonathan Dobres, Member Randy Swain, CEO Bill Ackerley, COO Dean Blythe, Member No person has ownership of 20% of more in the corporation, there is no subcontractor, and no political committee sponsored or controlled by corporation.	
Contractor address: 1900 4 th Avenue, Suite 202, Seattle, WA 98101	
Date that contract was approved: (By the SF Board of Supervisors)	Amount of contract: \$63,000 per year to City
Describe the nature of the contract that was approved: Permit of Wall Sign	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information (Please print clearly.)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

